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NUCLEAR REGULATORY COMMISSION

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GEIS RULEMAKING FOR PART 51

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BRIEFING ON STATUS OF ISSUES AND APPROACH
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PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Friday, February 19, 1993

The Commission met in open session,
pursuant to notice, at 2:00 p.m., Ivan Selin,
Chairman, presiding.

COMMISSIONERS PRESENT:

IVAN SELIN, Chairman of the Commission
KENNETH C. ROGERS, Commissioner
FORREST J. REMICK, Commissioner
JAMES R. CURTISS, Commissioner
E. GAIL de PLANQUE, Commissioner

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P-R-O-C-E-E-D-I-N-G-S

2:30 p.m.

CHAIRMAN SELIN: Good afternoon, ladies and gentlemen.

Today we are to receive a briefing from the staff on where they stand with the generic environmental impact statement and the relationship of the generic part to whatever site-specific work might be done in support of the license renewal applications.

Mr. Taylor, Mr. Parler, as you might remember when this document was first briefed to the Commission, I was mightily impressed with both the quality of the work and the imagination and I still am. I think it's really quite a good piece of work and the questions it has elicited are very interesting questions. I think the basic concept has held up pretty well and the discussions are quite interesting.

The one set of issues that I'd be particularly interested in your addressing was one that wasn't very clear in my mind the first time, but it's become clear now and that is the following. EISS generally are written in such a way that the environmental and the economic issues are settled once and for all at the time of the EIS and therefore quite

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1 a bit of work is put on the need for the facility in
2 the first place, the economic argument, et cetera.
3 We're faced here with a situation where at the federal
4 level we are looking at the environmental issue and,
5 of course, the justification has to be looked at. But
6 there's also a state scrub through the public utility
7 commissions that will look at the need for the
8 facility at all and the economic arguments in much
9 more detail than was perhaps conceived when the EIS
10 concept first came up.

11 So, insofar as your comments can shed some
12 light on the appropriate degree of economic analysis
13 and an analysis of alternatives in the GEIS itself, I
14 would appreciate that. I'm sure my colleagues would.

15 Commissioners?

16 Mr. Taylor?

17 MR. TAYLOR: Mr. Chairman, good afternoon.
18 With me at the table, Don Cleary, Tom King, Eric
19 Beckjord from the Office of Research, and Marty
20 Malsch, Office of General Counsel.

21 As the Commission knows, the primary
22 objective of this rulemaking has been to increase
23 regulatory efficiency by treating generically as many
24 environmental issues associated with license renewal
25 as possible. This will certainly continue to be the

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1 focus that the staff has in responding to public
2 comments and to revising the generic environmental
3 impact statement associated rule.

4 This briefing will cover matters as
5 follows: first, resolution of comments raised by the
6 Council on Environmental Quality, Environmental
7 Protection Agency on the procedural aspects of the
8 proposed rule; two, policy issues resulting from
9 public comments on NRC's treatment of need for
10 generating capacity alternative energy sources,
11 economic costs and cost benefit balancing in the
12 generic environmental impact statement and the
13 proposed rule; and then the overall status and
14 schedule of the staff efforts to work to completing
15 this rulemaking.

16 With those thoughts, I'd now ask Tom King
17 from the Office of Research to continue.

18 MR. KING: All right. Thank you.

19 (Slide) Let's begin with page 2 of the
20 briefing package, which shows the outline of the
21 briefing and the outline parallels the information
22 that was provided in SECY-93-032. I'm going to
23 discuss the first three bullets of the outline, the
24 purpose, objective, background and comment summary.
25 Marty Malsch from OGC will talk about the agreement

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1 reached with CEQ and EPA, and Don Cleary, our project
2 manager on this rulemaking in Research, will talk
3 about the policy issues. Then I'll conclude to talk
4 about our plans and schedule, as to where we're going
5 with this rulemaking.

6 (Slide) The purpose and objective of the
7 briefing are shown on page 3 and the information we're
8 going to discuss today is really a follow-up to the
9 plan and recommendations that we provided last May in
10 SECY-92-198.

11 That paper first reported on the comments
12 received on the proposed Part 51 rule change and on a
13 proposed course of action to address the major
14 concerns raised by CEQ and EPA. These concerns dealt
15 primarily with procedural issues related to the
16 conformance and consistency of the proposed rule with
17 NEPA in areas such as public participation and
18 exclusion of site-specific information. In that SECY
19 paper, several options for the rulemaking were
20 discussed and the staff recommended a course of action
21 which involved as a first step discussions with CEQ
22 and EPA on their procedural concerns.

23 As Mr. Taylor mentioned, the purpose of
24 this briefing is to inform the Commission of the
25 results of the agreements with CEQ and EPA and to

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1 solicit Commission approval of the agreements, to
2 provide an overview of the entire set of comments
3 received on the proposed rule, and to discuss in more
4 detail those with a policy nature, and to inform the
5 Commission of the plans and schedule for completing
6 the rulemaking.

7 (Slide) Going to page 4, let me take a
8 couple of minutes to refresh everyone's memory with
9 regard to the proposed rule that was published for
10 comment back in September of 1991. I'll focus on the
11 approach used, the major assumptions and key
12 provisions of that rule.

13 The purpose of the proposed rule was
14 directed toward defining the scope of environmental
15 issues which individual applicants would need to
16 consider at the time of license renewal. As Mr.
17 Taylor mentioned, regulatory efficiency as a key
18 consideration in selecting the approach taken and in
19 developing the proposed rule. To achieve this
20 efficiency, the staff, with the support of Oak Ridge
21 National Laboratory, did a generic analysis of as many
22 environmental issues as possible. This generic
23 analysis took the form of a generic environmental
24 impact statement which was published as a draft NUREG-
25 1437 and which was used to support the rule. Such a

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1 generic analysis was considered reasonable given the
2 fact that the plants covered by the proposed rule were
3 already built or nearly built and in many cases had
4 extensive operating experience which provided real
5 data on environmental impacts. In addition, the
6 refurbishment activities associated with license
7 renewal and their environmental impacts were
8 considered reasonably well established and known.

9 The key ground rules and provisions of the
10 GEIS were that it analyze the same scope of issues as
11 the more recent plant-specific environmental impact
12 statements it analyzed, and it included consideration
13 of new information where such new information had
14 become available since the plant-specific EISs. For
15 example, BEIR-V risk coefficient information.

16 The analysis of the GEIS was applicable to
17 118 plants and was based upon a single -- looking at
18 a single additional 20 year period of operation with
19 some bounding assumptions on the scope and timing of
20 the plant refurbishment activities that would need to
21 be done to support the 20 years of additional
22 operation. The GEIS included analysis of 104 issues
23 which were put into three categories, category 1, 2
24 and 3. Category 1 were issues where we could reach a
25 generic conclusion for all plants. Eighty of the 104

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1 issues were put in category 1. Category 2 was the
2 category where we could reach a generic conclusion on
3 plants that fell within certain bounds. Twenty-two
4 issues fell within category 2. And category 3 were
5 strictly site-specific or plant-specific issues and
6 two issues fell within that.

7 Along with identifying the categories for
8 category 1 and 2 issues, we identified whether the
9 impacts were small, medium or large. The proposed
10 rule then codified the category 1 and 2 impacts and a
11 conditional cost benefit conclusion and required site-
12 specific analysis only on the remaining issues which
13 were identified in the rule. The rule also allowed an
14 environmental assessment to be used to document the
15 site-specific analysis in lieu of an EIS if the site-
16 specific issues had no significant impact.

17 The entire rulemaking package, which
18 consisted of the rule, the GEIS, the regulatory guide,
19 a standard review plan and regulatory analysis was put
20 out for comment, 180 day comment period which started
21 back in September of '91. We held a workshop in
22 November of '91 to allow people to have discussions
23 and ask questions on the package to help facilitate
24 the comment process.

25 (Slide) Out of the workshop and out of

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1 the comment period came a lot of comments. Pages 5
2 and 6 provide an overview of the comments received.
3 In the final breakdown of the comments, both the
4 written and the workshop comments, there were 133
5 organizations or individuals that commented. They're
6 shown on page 5, the breakdown of those. Basically
7 the comments from the nuclear industry, from
8 Department of Energy and from about half of the states
9 were supportive of the approach we took. The comments
10 from the other half of the states, from the public
11 interest groups, from individuals and from EPA, CEQ
12 and Department of Interior had some strong concerns
13 associated with the approach we took.

14 There were substantial comments, there
15 were about 1,000. When you grouped those together
16 into like comments or concerns, they came out to about
17 347 and then we organized those according to 16
18 specific topic areas which are shown on page 6.

19 (Slide) Out of these concerns, those that
20 we think are of a policy nature we're going to talk
21 about in more detail today. The procedural concerns
22 that came from CEQ and EPA are really covered under
23 the second bullet down, compliance with NEPA and Part
24 51. At this point I'll turn it over to Marty Malsch
25 to talk in more detail about what those were and what

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1 the agreements were that were worked out to address
2 those.

3 MR. MALSCH: Okay. What we've done is in
4 response to the comments of EPA and CEQ and some
5 others, raising concerns about the sort of basic
6 approach we were taking here, we reexamined that
7 approach and especially with respect to both
8 consideration of new and site-specific information as
9 individual renewal decisions came up and with respect
10 to provisions for public participation in the decision
11 making process on NEPA issues. We've made some
12 adjustments in the overall approach, although I think
13 the essential elements of the overall approach are
14 preserved. That is to say we will still be resolving
15 by rulemaking generally some issues to the extent they
16 can be resolved generically.

17 Let me explain basically what the new
18 approach is and then come back and let me summarize
19 for you what I think are the essential differences
20 from the approach set forth in detail in their
21 proposed rule.

22 First of all, we are now proposing that
23 the final rule would require preparation of a
24 supplemental site-specific environmental impact
25 statement for each license renewal proceeding. Now,

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1 this is in contrast with a proposal in the proposed
2 rule to do this by to not issue environmental impact
3 statements on each renewal, but instead discuss
4 environmental issues in an environmental impact
5 appraisal.

6 This supplemental environmental impact
7 statement which would be done for each renewal case
8 would be a supplement to the generic environmental
9 impact statement which we're working on. We would
10 then publish this supplemental environmental impact
11 statement for comment for a minimum 45 day comment
12 period. We would make it clear in the rule that the
13 public may file comments in response to the
14 supplemental environmental impact statement and that
15 all comments received both with respect to whether the
16 generic evaluations should apply here and with respect
17 to site-specific factors left unresolved in the
18 generic evaluation, all comments would be considered
19 and addressed, but they would be addressed in
20 different ways.

21 First of all, in all cases we would
22 evaluate the comments to determine whether they
23 contained significant information, new information not
24 evaluated in the generic environmental impact
25 statement. If the commenter did provide new

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1 information which was relevant to the plant,
2 significant new information not considered which was
3 relevant to the plant, but to other plants as well,
4 that is to say it raised generic implications for all
5 plants or a class of plants, then the staff would at
6 that point feel the need to reexamine the generic rule
7 we had promulgated earlier based upon the generic
8 environmental impact statement and we would either
9 amend the rule and then proceed with license renewals
10 or suspend the rule, consider the new information on
11 a case by case basis and proceed with renewals in the
12 meantime. In either case, we would resolve that
13 matter by rulemaking. If an interested member of the
14 public were dissatisfied with our resolution, he, she
15 or it could petition for rulemaking and get resolution
16 that way.

17 If the significant new information dealt
18 really with site-specific matters, that is to say it
19 had no broad generic application, then we would
20 consider it in that particular case by waiving the
21 rule. The staff agreed that the information was
22 significant and demonstrated there was a mistake, an
23 error in the prior generic evaluation as applied to
24 this plant, and the Commission would seek Commission
25 approval to waive the rule as applied to that

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1 particular case. If the rule is waived, the staff
2 would then consider the information as if the rule
3 didn't exist. They would consider it on its own
4 merits. If the rule is not waived and a member of the
5 public were dissatisfied with that, then the
6 organization or person could petition for a waiver as
7 under the usual Commission procedures.

8 Now, as before in the proposed rule, the
9 analysis and impacts for unbounded category 2 and 3
10 issues would be discussed in the supplemental
11 environmental impact statement and there's nothing new
12 here. Although the GEIS analysis and impacts for
13 category 1 and bounded 2, they would not be discussed
14 in any detail in these supplemental environmental
15 impact statements. Instead, we would reference the
16 earlier evaluation. This is fairly consistent with
17 the earlier proposal. Obviously in the final
18 supplemental environmental impact statement, to the
19 extent we received comments, then the final would have
20 to reflect consideration of those comments along the
21 lines that I previously discussed. But going into the
22 process, we would rely upon the GEIS under normal
23 circumstances.

24 Now, the final rule and the generic
25 environmental impact statement would not include under

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1 this proposal any conditional cost benefit conclusions
2 and that's a change. Instead, we would only reach
3 conclusions on the overall environmental impacts and
4 the overall course of action to be taken in each site-
5 specific supplemental environmental impact statement.
6 So, we'd reserve on the ultimate questions until we
7 had a look at all of the environmental evaluations.
8 This would only be done in the site-specific
9 supplemental EISs.

10 Finally, we'd modify the rule to make it
11 clear that NRC would review the rule and update it as
12 necessary every ten years at a minimum.

13 Now, that's the outline of the proposal
14 that we have made to EPA and CEQ as the exchange of
15 correspondence with them as attached to the SECY paper
16 indicates, the review of this proposal has been
17 favorable and we are proceeding along these lines.

18 Now, looking back on it, I think there are
19 the following important differences from the earlier
20 approach. First, I think the most important
21 difference, and I think this is really the only really
22 important difference, is that we will be doing
23 supplemental site-specific environmental impact
24 statements and publishing them for comment. That's a
25 significant difference. Now, that contrasts with the

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1 proposal earlier to do environmental impact
2 appraisals. Now, one can quibble about the scope of
3 an appraisal as opposed to an environmental impact
4 statement, but I think it is important that we're
5 going out for comment on the document.

6 Now, the significance of this change is
7 mitigated somewhat by the fact that even under the
8 proposal the Agency had the option to publish the
9 appraisal for comment. In a highly contested renewal
10 proceeding, it remained to be seen whether NRC would,
11 in fact, under those circumstances insist on going
12 forward with appraisals without getting any prior
13 public comment. To the extent we would have gotten
14 prior public comment and solicited prior public
15 comment anyway, then the significance of this
16 difference diminishes.

17 CHAIRMAN SELIN: Are you saying there's a
18 big difference between environmental assessment and
19 the EIS' requirement for public comment?

20 MR. MALSCH: An environmental impact
21 statement must be published in draft form for public
22 comment. An appraisal need not, but may be.

23 CHAIRMAN SELIN: Okay. Are there other
24 major differences other than format?

25 MR. MALSCH: There are some differences in

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1 terms of scope. There is still required to be a
2 discussant of environmental impacts in both documents.
3 Both documents require a discussion of alternatives
4 and I guess the differences would be primarily perhaps
5 in terms of level of detail, obligation to solicit
6 comments, not only from the public but federal, state
7 and local agencies, and perhaps the obligation to draw
8 some overall cumulative conclusions about the risks
9 and benefits of the action and environmentally
10 preferable alternatives. In some circumstances, at
11 least the scope of the two documents can be somewhat
12 comparable.

13 CHAIRMAN SELIN: Do state agencies such as
14 public utility commissions lose their options to do
15 their review independently or completely in either
16 case?

17 MR. MALSCH: Nothing in NEPA has any
18 affect at all and nothing we would do under NEPA can
19 have any affect on the jurisdiction of authority of
20 state and local agencies to do either environmental
21 evaluations, issue environmental permits or do
22 economic evaluations, set rates or make need for
23 quality determinations. The two operate in parallel.
24 Our actions can no effect whatsoever on their actions
25 as a legal matter. So, to the extent that there were

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1 comments suggesting that we were preempting or
2 precluding them from doing their -- exercising their
3 own judgment, those comments are misplaced.

4 Now, they do have a practical effect in
5 the sense that here is the federal government speaking
6 to an issue which they must also speak to. So, what
7 we do may have an influence on what they do, but it
8 certainly has no preclusive effect.

9 CHAIRMAN SELIN: Thank you.

10 MR. MALSCH: And that would be true
11 whether we're doing an EIS or an appraisal.

12 CHAIRMAN SELIN: Commissioner Curtiss?

13 COMMISSIONER CURTISS: Is the standard for
14 judicial review the same in either case, an
15 environmental assessment accompanied by a finding of
16 no significant impact by an environmental impact
17 statement supplemental EIS?

18 MR. MALSCH: I think that they're pretty
19 much equivalent. In both cases, I think the essential
20 question is has the Agency taken a hard look at NEPA
21 environmental factors.

22 COMMISSIONER CURTISS: Okay.

23 MR. MALSCH: Now, the type of challenge is
24 different. If you don't write an environmental impact
25 statement, then you can raise as a challenge the issue

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1 whether the Agency has not taken a hard look and
2 whether the action, in fact, is a major federal action
3 with the significant environmental consequences. Now,
4 the significance per se of the environmental effects
5 is irrelevant if you're writing an environmental
6 impact statement because you've already overcome that
7 hurdle.

8 COMMISSIONER CURTISS: Right.

9 MR. MALSCH: So, the standard is the same.
10 You raise an additional issue if you decline to do an
11 environmental impact statement.

12 COMMISSIONER CURTISS: Okay. Passing on
13 to other -- let me just mention two other what I think
14 are at least somewhat significant differences. One is
15 the decision not to do a conditional or tentative cost
16 benefit evaluation. Now, we can still do under this
17 proposal generic evaluations of the various pieces in
18 the overall cost benefit conclusion, assuming we're
19 going to do one, but the overall conclusion would not
20 be reached. Now, I think that's sort of a -- I
21 wouldn't call it insignificant, but I think that's not
22 an immensely significant change.

23 The third thing I would going to mention
24 is that all this discussion about comments and
25 considering on their merits comments which are raising

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1 significant new information and the various frameworks
2 we've laid out in the proposal for handling those
3 kinds of comments, i.e. rule waiver, rulemaking and so
4 forth. I think what we've done here in those terms
5 could fairly be derived from the proposed rule
6 considered in context with other Commission rules.
7 For example, the rule on waivers. But what we've done
8 here is thought it through more carefully and fully
9 and laid it out in much more detail. But I think it
10 always would have been the case that persons could
11 file petitions for rulemaking raising significant new
12 information. It always would have been the case that
13 they could have asked us to suspend renewal proceeding
14 pending completion of the rulemaking, and it was
15 always the case that if someone had site-specific new
16 information, they could have challenged it through the
17 rule waiver provision and asked us to consider it.
18 What we've really done here is laid the process out
19 clearly a little more thoroughly so it's there for
20 everyone to see.

21 COMMISSIONER CURTISS: Marty, could I ask
22 you a question on a couple of points that you covered
23 so far? In the case where after publication of the
24 generic environmental impact statement information is
25 brought to our attention through the comment process

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1 on the supplemental EIS for a specific application
2 which goes to an issue addressed in the GEIS, the
3 generic evaluation, and which the commenter argues
4 poses significant new information and hence we ought
5 to reopen the GEIS in that respect or take one of the
6 other procedural options that you've outlined, is it
7 wholly within the staff's discretion to determine the
8 significance of the new information or once the staff
9 makes that determination? And assume for the sake of
10 discussion that the staff says, "This is not
11 significant new information," is that kind of issue
12 subsequently one that can be or you intend to be
13 cognizable before the board?

14 MR. MALSCH: Well, it would depend. If
15 the information is -- the basic answer is they have to
16 come to the Commission first. If the information is
17 considered significant by the interested party and
18 staff says, "Now, this is not significant." If it's
19 generic information, then the remedy is a petition for
20 rulemaking and that usually comes to the Commission.
21 Before the Commission would grant a petition for
22 rulemaking, it would consider the merits of the
23 information. If the information is site specific,
24 then they'd need to petition for a waiver. But after
25 being screened by the board, the board is referred to

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1 the Commission and only the Commission can grant
2 waivers. So, again it comes before the Commission.

3 So, the procedural route is somewhat
4 different, but no matter how it gets there, the
5 Commission would be looking at the staff judgment,
6 looking at what other parties say about it, and making
7 its own determination about significance.

8 COMMISSIONER CURTISS: And we would be
9 exercising that authority in our capacity as, among
10 other things, an adjudicatory panel, I take it,
11 binding on whatever licensing board consideration
12 might be undertaken?

13 MR. MALSCH: Yes.

14 COMMISSIONER CURTISS: So, there's no
15 circumstance, in other words, where you envision that
16 once a determination is made under the procedures that
17 you've described with regard to the significance of
18 the information by the Commission upon the staff's
19 recommendation, that we would then in turn need to
20 litigate before the board the significance of that
21 information, whether it was or wasn't significant?

22 MR. MALSCH: Not without the Commission's
23 approval.

24 COMMISSIONER CURTISS: Okay.

25 MR. MALSCH: Now, I suppose the Commission

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1 could -- in theory they could defer on the issue and
2 ask the Board for a judgment on significance, but
3 again that would involve the Commission's own
4 judgment.

5 COMMISSIONER CURTISS: Okay.

6 COMMISSIONER de PLANQUE: Marty, back to
7 the preemption issue. I think I understand it in the
8 direction in which you discussed it. But suppose you
9 have the state coming up with one conclusion based on
10 a set of information, say in the cost benefit or
11 alternate energy area, and we have the same set of
12 information and come up with a different conclusion,
13 assuming that's possible. What, if any, are the legal
14 ramifications of that?

15 MR. MALSCH: I just think you have two
16 different agencies coming to different conclusions and
17 our conclusion is not binding on them and their
18 conclusion is not binding on us.

19 COMMISSIONER de PLANQUE: And that's the
20 end of it?

21 MR. MALSCH: That's the end of it. It's
22 sort of an awkward situation.

23 COMMISSIONER de PLANQUE: Yes.

24 MR. MALSCH: Now, hopefully, one of the
25 obligations we have in doing environmental impact

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1 statements or supplemental impact statements is
2 solicited comments from interested federal, state and
3 local agencies. Hopefully we would know about the
4 agency's conclusions in the context of having received
5 their comments and taking it into account. There is
6 lots of case law, NRC case law, involving us writing
7 environmental impact statements years ago on
8 construction permits in which we say we give great
9 weight to the views of state agencies, particularly on
10 such questions as economics and need for power. We're
11 going to look at that question again. But when we did
12 those statements the case law was pretty clear that
13 while we could give great weight to their conclusions,
14 ultimately we had to reach our own conclusions and
15 there was no way to avoid that. But ultimately, if we
16 disagree, then you have two agencies disagreeing and
17 that's awkward, but that's the way it is.

18 COMMISSIONER ROGERS: Could I ask a
19 question now on that? I'm a little puzzled about your
20 point of view there in the light of Part 1506 of NEPA
21 which directs, in 1506.2, elimination of duplication
22 with state and local procedures. It directs agencies
23 to jointly participate with the states. "Except for
24 cases covered under paragraph A of this section, such
25 cooperation shall to the fullest extent possible

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1 include," and then there's, "joint planning, joint
2 environmental research, joint public hearings, joint
3 environmental assessments, and agency shall cooperate
4 with state and local agencies to the fullest extent
5 possible to reduce duplication between NEPA and
6 comparable state and local requirements."

7 How does that square with the point of
8 view that you just expressed that these are just two
9 separate activities? In reading this it sounds as if
10 NEPA is saying that a federal agency, in doing an EIS,
11 should cooperate fully with the states and to whatever
12 extent possible they should do it together, jointly.

13 MR. MALSCH: Well, let me just mention, we
14 have had -- when we're doing full environmental impact
15 statements, we had a number of proceedings in which we
16 had actually worked out joint arrangements with
17 cognizant state agencies. In one case that I'm
18 familiar with we, in fact, work out an arrangement
19 whereby we were going to prepare a joint environmental
20 impact statement and participate in joint
21 environmental hearings in which both we and the state
22 would preside in the same hearing at the same time.
23 I think that's a very nice thing if you can work it
24 out. I think in some cases it can be -- arrangements
25 along those lines can be worked out. But there was

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1 lots of case law, and again we have to -- one of our
2 proposals here is to reexamine the case law over the
3 past several years to see if there's any change in it.
4 But the case law was very clear at the time we were
5 writing these environmental impact statements that
6 ultimately the content of an environmental impact
7 statement was the federal agency's responsibility. It
8 had to take responsibility for all that was written in
9 it. So, for example, while we could rely upon, let's
10 say, the conclusions of a state agency on, let's say,
11 economics and need for power, we had to take
12 ultimately -- since it was our environmental impact
13 statement, we had to take responsibility for their
14 conclusions and stand by them in the review process as
15 if they were ours.

16 Now, in the past, that had led the NRC to
17 conclude that it had to do at least some measure of
18 independent evaluation in these areas. It couldn't
19 just stand by and let the other agencies sort of
20 control the contents of its EIS. That's where things
21 stood as of probably the last time we wrote a full
22 environmental impact statement on a nuclear power
23 plant. Now, what I think we need to do is go back and
24 look and see whether the law has changed at all in
25 that field. I don't know whether it has or not. It's

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1 a difficult area to research.

2 MR. PARLER: I think that the remarks that
3 Marty made earlier that you were trying to -- or asked
4 the question about squaring with the 1506, Marty was
5 talking about the legal effect of one system having
6 one objective on another completely separate system.
7 I think it is clear that certainly for systems which
8 are respective of federal or state or try to deal with
9 environmental problems that are the goal of the NEPA
10 or federal statute or similar state statutes that
11 clearly the federal government and the state
12 governments would work together very closely and try
13 to coordinate their efforts.

14 But in any event, even if we are operating
15 in the same area but under separate authorities, but
16 try to achieve separate objectives, it would be our
17 purpose to try to cooperate, coordinate as much as we
18 can to avoid problems such as the ones that were
19 raised in these comments. You can take as a given
20 that there is no preemption on our part. There's a
21 Supreme Court decision that in effect says the only
22 preemption that has been exercised in these areas are
23 radiological health and safety.

24 Now, we have followed the approach here
25 for plant life extension that we have followed in the

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1 past, in individual licensing cases. We have in our
2 regulations or operating licenses a provision that if
3 you have done these NEPA-related things at the
4 construction permit stage, since they've already been
5 done, you don't have to do them again. At first
6 impressions it would appear that if that is the case,
7 if that is the policy for an operating license, that
8 probably could also be sound policy for a plant life
9 extension. What we are relooking or examining very
10 closely is the extent for plant life extensions we can
11 comply with the procedures and objectives of NEPA
12 without raising these issues that are of
13 understandable concern to the states in view of their
14 economic responsibilities even though there is no
15 preemption on our part. That's what we try to do.

16 MR. MALSCH: Incidentally, the rules, as
17 Bill mentioned, we do have a rule which says that in
18 supplemental environmental impact statements at the
19 operating license stage where there had been an
20 environmental impact statement at the construction
21 permit stage which looked at need and alternatives, we
22 wouldn't reexamine need and alternatives. That was
23 based upon a kind of -- actually a generic conclusion
24 much like the conclusion that we're looking at in a
25 draft GEIS here, namely that once a plant is

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1 completed, it is almost certainly either needed to
2 answer new power demands or more economical than other
3 alternatives and that even if there were other
4 alternatives to the plant at that stage which were
5 environmentally preferable, the economics of the
6 nuclear power plant were almost certainly favorable
7 and it would outweigh these environmental advantages.

8 Now, that's the generic basis for that
9 earlier OL rule. So, it's somewhat like the generic
10 basis offered up for this rule, but it has to be
11 looked at.

12 In addition, we have to look at whether
13 and how we actually got -- I know we can reconstruct
14 it, but to reconstruct how we became involved in
15 economics and need for determinations and look to see
16 whether in a renewal context that's absolutely
17 required and it's worth reexamining. I don't want to
18 advertise that it's for sure we'll reach different
19 conclusions. We may very well affirm that the earlier
20 approach we followed in the '70s and '80s is the one
21 we'll have to follow here, but it's worth looking at.

22 MR. PARLER: Certainly in that regard,
23 whether the bottom line could be expressed in
24 qualitative terms rather than quantitative terms.

25 MR. TAYLOR: We'll now continue --

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1 COMMISSIONER CURTISS: Are you on page 10
2 yet?

3 MR. TAYLOR: We're giving you the numbers.
4 We're on page 10.

5 MR. CLEARY: (Slide) Page 10. During the
6 next several minutes, I'd like to summarize for you
7 the comments that we received during the public
8 workshop and written comments in several topical areas
9 that raise what we consider potentially important
10 policy issues. These are the very topics that we've
11 been talking about for the past several minutes. We
12 bring these to the Commission's attention at this time
13 to give advance notice of these issues and that we may
14 be coming back, will likely come back to the
15 Commission and ask for guidance.

16 Also, after this discussion and based on
17 the Commission paper, the Commission may wish to make
18 its views known to the staff to give us early guidance
19 as we proceed with developing an options paper and
20 coming up with proposed recommendations on how these
21 issues should be handled.

22 The public comments raised potential
23 policy issues in four areas. These pretty much track
24 major sections in the generic environmental impact
25 statement. These are the need for generating

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1 capacity, alternative sources of energy, economic
2 costs and cost benefit balancing.

3 The policy issues raised involve the scope
4 and the focus of NRC's environmental review for
5 license renewal. Specifically the central question
6 raised in each of these areas is what role should each
7 of the topical areas have in the NRC environmental
8 review and in the licensing decision process.
9 Although these issues are raised in the context of
10 license renewal, they are also applicable to all
11 licensing actions and must be treated consistently in
12 10 CFR Part 51. The staff will be providing options
13 and a recommended position on each of these issues to
14 the Commission and the schedule will be discussed in
15 the final part of today's presentation.

16 (Slide) Page 11.

17 Before discussing the issues raised in
18 each of these topical areas, I'd like to provide a
19 framework by highlighting certain of the basic
20 requirements of an EIS. An EIS must include: one, a
21 description of the proposed federal action; two, a
22 discussion of the purpose of the action, that is the
23 underlying need that is met by the proposed action;
24 and three, a discussion of the environmental
25 consequences of the proposed action and alternative

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1 actions. The alternative actions must also meet the
2 underlying need.

3 In the need for generating capacity, NRC
4 has chosen to define the need for its licensing action
5 in terms of the need served by the facility being
6 licensed. This is consistent with past licensing
7 practice. A number of states have commented that
8 NRC's inclusion of need forecasting in the GEIS and
9 rule has the practical effect of interfering with the
10 state's regulatory authority to determine need.
11 Several industry commenters have expressed similar
12 concerns.

13 A majority of commenters addressing the
14 need for generating capacity are concerned that
15 accurate forecasts of need cannot be made so far in
16 advance of license renewal. Thus, the need for
17 generating capacity in their view should be made a
18 category 3 rather than a category 1 issue. Many
19 commenters also recommend that need be changed from
20 category 1 to category 3 to allow for meaningful
21 public participation.

22 Several states and several industry
23 representatives have recommended that if NRC is to
24 consider need in its environmental review, need for
25 generating capacity in its environmental review, that

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1 the NRC should use the state's determination of need
2 in that review.

3 (Slide) Slide 12.

4 These comments on need for generating
5 capacity raise the question of to what extent should
6 NRC continue to address need for generating capacity
7 in its EISs for license renewal. In addressing this
8 question, we must consider the Agency's definition of
9 proposed federal action and need for that action.
10 Federal agencies appear to have a wide latitude in
11 defining the proposed action and the need being met by
12 that action. A basic question that also must be
13 considered is the role that need should have in
14 determining whether to renew an operating license.
15 Specifically, would a license be denied based on
16 generating capacity considerations? Current practice
17 seems to imply that a license could be denied.
18 However this issue is resolved, there needs to be a
19 consistent treatment of need for licensing renewal at
20 other stages of licensing.

21 Finally, whatever the treatment of need
22 for generating capacity is in the GEIS, the
23 supplemental EISs, we need to ask the question to what
24 extent can NRC adopt the state's determination of
25 need. These are issues that we'll be considering in

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1 developing our options paper.

2 COMMISSIONER REMICK: Is it possible that
3 a state definition of what is a need and our
4 definition of a need could be different?

5 MR. CLEARY: I think that we could reach
6 a common definition with the states. I know that in
7 analyzing the comments, for example, several states
8 tie in the economics. There's a need for the optimal
9 way of meeting an energy demand and that optimal way
10 folds in economics, it folds in alternatives. But I
11 think that in terms of the federal definition of need,
12 I suspect that we could reach a common agreement.

13 CHAIRMAN SELIN: Could there be a timing
14 problem where the state information just isn't
15 available with these long lead times you're talking
16 about?

17 MR. CLEARY: That's certainly a major
18 consideration.

19 CHAIRMAN SELIN: Because it's not just a
20 formal question of what does the GEIS look like or the
21 EIS, there's the practical question of can you get
22 from here to there, can you have the information.
23 We're pushing the utilities to start quite early so
24 that the issues could be addressed and remedial
25 actions could be taken if necessary. There's the risk

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1 that they'll commit themselves so early in terms of
2 alternatives or costs or needs and that they'll spend
3 a great deal of money on assumptions and then find out
4 that the state assumptions are either not available or
5 very different.

6 MR. CLEARY: I think you're correct,
7 particularly with the great lead time that may be
8 involved in license renewal.

9 COMMISSIONER CURTISS: If you treated this
10 issue as a category 1 issue, the implication of that
11 is that it would be addressed in the GEIS in a generic
12 fashion and absent significant new information would
13 not subsequently reopen the individual proceedings?

14 MR. CLEARY: That's correct and that's the
15 way it stands in the GEIS right now.

16 COMMISSIONER CURTISS: Okay. And that was
17 what was proposed in the approach that we took?

18 MR. CLEARY: Yes.

19 COMMISSIONER CURTISS: A category 3
20 designation would lead to that issue being addressed
21 on a case by case basis for individual license renewal
22 applications?

23 MR. CLEARY: Yes.

24 COMMISSIONER CURTISS: And so, at least
25 insofar as the timing, among the other considerations

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1 that are relevant, the timing of those two options
2 would have you in one case prepare and evaluate the
3 information far in advance of any specific
4 application. The other one would tied to a specific
5 application and then presumably what ever attendant
6 state evaluation goes on at that time.

7 MR. CLEARY: Correct.

8 COMMISSIONER CURTISS: Okay.

9 COMMISSIONER REMICK: Just off the top of
10 my head, a question comes to mind. In the case of
11 construction permits, I guess we define need as need
12 for power or need for generating capacity. Has any
13 thought been given to whether the need for license
14 renewal should be the same need when you have an
15 existing plant? In other words, continuing need for
16 generating capacity, is that automatically the
17 definition of our need? Has any thought been given
18 to --

19 MR. PARLER: I think that's an example of
20 one of the things that is associated with the hard
21 relooking that we are doing in order to address these
22 issues and to make sure that we have a sound reason if
23 there is any different treatment here for it to be
24 consistent with the approach that we have taken
25 elsewhere. For example, if the purpose of the federal

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1 action is one thing, then certain results follow.
2 Certainly if the purpose is a broader purpose, if the
3 purpose of the federal action is narrower in scope,
4 perhaps some of these types of issues become more
5 manageable.

6 MR. MALSCH: For example, an early issue
7 that was encountered in writing early environmental
8 impact statements at the construction permit stage
9 dealt just with this issue. Let us suppose that you
10 have a plant proposed to be cited in the State of
11 Maryland and you say, "Well, the benefits of this
12 action that would counterbalance and justify any
13 adverse environmental impacts would be satisfying
14 power demand." Well, where? If it's power demands
15 only in the State of Maryland, then the alternatives
16 you would examine would be alternatives to supply
17 power demands in the State of Maryland. If it's to
18 supply power demands in the PJM grid, then you have a
19 broader scope. If it's power demands in the Eastern
20 United States, the scope becomes still broader.

21 CHAIRMAN SELIN: But how is that affected
22 by the fact that this really a very gentle test that
23 we're trying to undergo? All we're trying to do in
24 this case is say, "Is there enough reason to believe
25 that there's need that we should proceed with the

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1 analysis of the environmental points?" They still
2 will have to go back to the state once the EIS is done
3 and then go through a much tougher economic analysis
4 of need and cost in order to get whatever costs are
5 necessary to get license renewal, to get these costs
6 put into the base. It's more like a hospital permit
7 than it is a normal construction permit in that
8 environmental issue, the economic need test is a
9 gentle one in the environmental issue because you're
10 still going to have a full review at the public
11 utility --

12 MR. PARLER: Well, of course, all along,
13 Mr. Chairman, we've had a full public review or
14 separate review before the state PUCs, but we have
15 gone about, at least for the initial licenses and the
16 construction permits, our NEPA responsibilities in a
17 certain way. Now that we're dealing not with an
18 initial license but something which has been operating
19 and generating electricity at a particular site,
20 presumably safely and successfully and acceptable to
21 the environment over a period of years, what does NEPA
22 require that the focus be for NEPA purposes under
23 those circumstances?

24 MR. MALSCH: One problem we encounter is
25 it's hard to sort of dip your toe into the need for

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1 power and water without getting completely drowned.
2 Let me give you an example. Once we embark upon the
3 process of saying, "We'll look at environmental
4 impacts and we'll endeavor to justify them in light of
5 the perceived benefits," and we open the NRC licensing
6 proceeding into a forum for plant opponents to
7 challenge the plant on any number of grounds including
8 it's not needed, by the very nature of the
9 proceedings, since it's being contested, it drives
10 people to do even greater and greater and more and
11 more detailed analyses, until you end up in a
12 situation in which you could do exactly the kind of
13 analysis which you might expect the PUCs to try to do
14 later on and it gets to be difficult, especially when
15 you're operating very far in advance.

16 CHAIRMAN SELIN: This is the Malsch tar
17 baby theory. I assume you're going to have answers to
18 all these questions for the document.

19 MR. MALSCH: Oh, of course.

20 MR. PARLER: We have them under advisement
21 and in due course, with great expedition, we will try
22 to have the results of our efforts, yes.

23 COMMISSIONER CURTISS: Yes. Could I ask
24 two questions about the relationship of what you're
25 describing to the state process? Setting aside for a

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1 minute the possibility the states believe that
2 whatever we do here would preempt their decision
3 making authority and perhaps not just setting it aside
4 but recognizing that we tried to address that issue in
5 the letter to Governor Dean about a year ago by
6 saying, "Nothing here is intended to preempt the
7 decision that you reach." To put it differently, a
8 state has unfettered discretion and latitude to reach
9 whatever conclusion it wishes to reach through, let's
10 say, its PUC process irrespective of the conclusion
11 that we reach. What is the state concern here? With
12 respect to all these issues, I'm not sure I
13 understand, unless it is preemption, what it is.

14 MR. CLEARY: As I see it, there are three
15 areas of concern that the states and others have. One
16 is the preemption and it's not just on the strict
17 legalities. The comments, the detailed comments that
18 do a meaningful job of addressing this concern lay out
19 examples of where weight is given to the federal
20 agency having spent resources and analyzing an issue
21 and making a decision, going through an adjudicatory
22 hearing that weight has been given at the state level
23 to the federal agency's findings. So, it's not
24 strictly that -- some of the states have told us, "We
25 know you know the law and we know that you know we

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1 know the law, but it's not as simple as that."

2 COMMISSIONER CURTISS: Let me just pick up
3 on that point before you go on because I want to
4 follow-up on that theme. I could understand how that
5 concern would arise in your typical CP evaluation
6 where the NRC would go through an environmental
7 evaluation prior to the CP and the state PUC might not
8 get involved in a prudency determination, particularly
9 if construction work in progress is not allowed until
10 much later. That is to say when the plant comes in
11 operation and the rate case is presented, in which
12 case you've got a preceding federal determination that
13 I think you're saying the courts might attach great
14 weight to and thereby in some respect, I don't think
15 preempt is the right word, but perhaps suggest the
16 conclusion that the state should reach.

17 In this case, by contrast, my sense is in
18 watching what's happened with the utilities that are
19 evaluating license renewal, we've got a very different
20 situation. You've got a case where I see one of two
21 possible scenarios coming to pass. One would be
22 before we even get an application a state public
23 utility commission and its, in our case, licensee, its
24 nuclear utility goes through a detailed evaluation,
25 maybe a least cost planning type evaluation in order

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1 to determine whether the state believes, the PUC
2 believes, Utility X ought to pursue renewal, in which
3 case we haven't rendered a determination at that point
4 at all. They've got essentially a blank slate upon
5 which to write. Even to the point where if they
6 believed based upon whatever evaluation they wish to
7 undertake of need for power, source of supply,
8 environmental effects, cost benefit balancing, the
9 four issues that you have here, if the answer to that
10 is negative, presumably we'd never have a license
11 renewal application. The state PUC would say, "We're
12 not going to allow you to pursue renewal." That one
13 seems to me to be a pretty clear case where the state
14 is not preempted in any way because we haven't even
15 acted and they can carry out their evaluation in any
16 fashion that they wish.

17 Now, the Northern States Power situation,
18 as I have come to understand it, is slightly
19 different. There, what they sought to do, what I
20 understood their objective to be was to come in first
21 and pursue license renewal from a technical
22 standpoint. That is to say to get their license
23 renewed here at the agency so that they could then at
24 some point as they got closer to the actual expiration
25 of their license then go through with the PUC the

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1 evaluation of all the considerations that the PUC
2 might wish to take into account, but being able to
3 hold up the license renewal application saying, "The
4 technical questions have been addressed. You should
5 not be swayed by the fact that there's a lot of
6 regulatory instability in this process." There it
7 seems to me, even though the state evaluation might
8 follow ours, it strikes me that it's a context in
9 which there's going to be much less potential for
10 preemption.

11 So, in seeing the way it's done in the
12 past in the typical CP case and comparing how
13 evaluation would be undertaken here, I just don't
14 grasp at this point what the preemption concern is.

15 MR. CLEARY: Well, I think it's very
16 closely tied in with our attempt to make this area a
17 category 1 in the GEIS at this point in time.

18 MR. MALSCH: And that would be now.

19 COMMISSIONER CURTISS: Category 1 binds
20 the federal government, it doesn't bind the state PUC.

21 MR. MALSCH: No, but the comment that it
22 has a practical significance in terms of the federal
23 government has spoken and has said, "All plants are
24 needed," has a practical impact in then future
25 proceedings.

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1 MR. PARLER: I think a lot of people are
2 using preemption here in these comments rather loosely
3 to mean really synonymous with practical concern.

4 COMMISSIONER CURTISS: I'm not proposing
5 this, but if you change this to a category 3, the
6 concern would go away?

7 MR. MALSCH: It might go away depending
8 upon the timing of the site-specific supplemental EIS.
9 It could very well go away.

10 MR. CLEARY: I think to a great extent it
11 would and it would also take care of the other two
12 areas or greatly alleviate the problems raised in the
13 other two areas. The second area is public
14 participation. NEPA is basically a process law and
15 the timing of public participation in this exercise is
16 found unacceptable by many of these commenters. They
17 would feel much more at ease if the participation
18 would take place at the time of the licensing action.
19 Then the third area is that there's a whole host of
20 technical concerns that have been raised about
21 forecasting so many years in advance.

22 COMMISSIONER CURTISS: I must say I'm torn
23 between, on the one hand, what seems to me the great
24 value in having the evaluation done as close to the
25 time and as related to the specific license renewal

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1 application that we had before us, on one hand, which
2 would suggest a category 3, versus on the other hand
3 the point that the chairman has made in previous
4 contexts and that is that it is a value in looking at
5 these decisions. Here we're talking about need for
6 power to look at them in a much broader way and not in
7 isolated specific cases. When you come back with your
8 recommendations here on whatever schedule you present
9 them, that might be an issue that would be worth evaluation.

10 CHAIRMAN SELIN: Mr. Cleary, could I just
11 follow-up on Commissioner Curtiss' point? Does it
12 follow that if it's a category 1 question it is
13 settled by the rules by which we make rules and if
14 it's a category 3 it's subject to all of the questions
15 of adjudication, discovery, cross examination, et
16 cetera?

17 MR. CLEARY: Yes.

18 CHAIRMAN SELIN: So, there's a big
19 practical impact other than timing about whether it's
20 a category 1 or category 3?

21 MR. CLEARY: There's very large resource
22 impact.

23 COMMISSIONER CURTISS: Significant new
24 information.

25 MR. MALSCH: Yes. In terms of public

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1 process, I think our restructured effort here has a
2 major impact in addressing that concern because we are
3 now very clear, we will consider significant new
4 information and we explain how we will consider it.

5 CHAIRMAN SELIN: But a category 1 would
6 say it's \$1250.00 a kilowatt to build a clean coal
7 plant without looking at all kinds of specific
8 questions, how it differs a little bit from one state
9 to another, and a category 3 would say you'd have to
10 take a look at transportation costs to get coal to
11 that state and a whole lot of specific things in a
12 very detailed sense.

13 MR. MALSCH: Right. And, in fact, one
14 consequence of doing generic broad evaluations is they
15 end up being premised upon a lot of assumptions. That
16 means that --

17 CHAIRMAN SELIN: As opposed to specific
18 evaluations?

19 MR. MALSCH: When the assumptions are
20 stated, then they are the basis for request for real
21 waivers because the argument is the assumption isn't
22 applicable.

23 CHAIRMAN SELIN: Okay.

24 MR. PARLER: I think, Mr. Chairman, this
25 may be obvious, but this is the way that I understand

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1 it. The more things you put into the category 3, the
2 less significant for those things the generic
3 environmental impact statement --

4 CHAIRMAN SELIN: But also the greater the
5 total cost for preparing and processing renewal.

6 MR. PARLER: Right.

7 CHAIRMAN SELIN: Mr. Cleary, that was an
8 illuminating point that you brought up.

9 MR. CLEARY: (Slide) We're ready for page
10 13, to discuss alternative energy sources.

11 The discussion of alternatives to the
12 proposed federal action is referred to as the heart of
13 the EIS. Alternatives to the proposed federal action
14 must meet the same underlying need as the proposed
15 federal action. In this rule and the GEIS, the
16 alternatives to renewal of an operating license are
17 alternative energy sources that can replace the need
18 from the generating capacity of the plant in question.
19 This definition of alternatives is the same as used in
20 previous power plant licensing actions. State and
21 industry commenters have stated that states have the
22 authority to determine energy mix relative to the
23 utilities they regulate. However, various states have
24 expressed concern that NRC's treatment of alternatives
25 has the practical effect of interfering with state

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1 regulatory authority, the same issue really as in
2 need.

3 Various commenters have stated that the
4 comparison of alternatives should emphasize
5 environmental consequences rather than economic costs.
6 Federal, state and industry commenters expressed
7 concern that an economic threshold test to trigger a
8 further consideration of alternatives is inappropriate
9 in the NEPA analysis. The last two points are that we
10 have basically put too much emphasis in the NEPA
11 review on economic information and economic criteria.

12 CHAIRMAN SELIN: I assume that our
13 position is that it's not that we want to look at
14 alternatives or the cost, but that if it really were
15 our druthers, we would agree with these points that
16 our main question is what actions have to be taken to
17 keep this plant safe if it's going to operate another
18 20 years. The question is what does the law call for,
19 not what from a policy point of view do we wish the
20 law would call for for a --

21 MR. CLEARY: Well, this point specifically
22 goes to the comparison with alternatives. They're not
23 questioning our need to know the cost of regulatory
24 requirements on that specific plant.

25 MR. PARLER: But the answer to your

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1 question, Mr. Chairman, is the reason why we're doing
2 this is to comply with NEPA procedures and one of the
3 linchpins of NEPA, the case is, as I say, has been to
4 look at alternatives.

5 CHAIRMAN SELIN: I mean we would be, from
6 a question of policy, probably reasonably comfortable
7 to say from an environmental point of view and from a
8 safety point of view the plant is solid and then let
9 the public utility commission decide from an
10 alternative point of view and an economic point of
11 view. Given whatever we require and given whatever is
12 required economically, I mean environmentally, does it
13 meet the economic needs of the state, but we still
14 have to read the law and see what is required of us.

15 MR. CLEARY: We do and it's possible that
16 in the GEIS we could hold back a bit on the economics
17 without changing the basic approach. But this is one
18 of the things that we're looking at.

19 COMMISSIONER CURTISS: Just a point of
20 historical reference here. In the context of
21 licensing nuclear plants, there was a time when the
22 Commission, for reasons largely related to efficiency
23 and to avoid duplication of effort, felt that these
24 responsibilities, although required under NEPA, ought
25 to be passed on to the states since they do this kind

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1 of evaluation anyway, and in a version of the
2 licensing reform legislation that was submitted at a
3 time when Marty and Bill might recall, proposed that
4 the statute be changed to accommodate that.

5 MR. PARLER: We were similarly
6 unsuccessful in getting any of them reported out of
7 committee, as I recall.

8 COMMISSIONER CURTISS: Right.

9 MR. PARLER: You drafted most of them.

10 COMMISSIONER ROGERS: Maybe that's why.

11 CHAIRMAN SELIN: On a purely speculative
12 basis, did any of the commenters propose to try to do
13 a parallel analysis so that the federal government
14 would concentrate on the strict environmental and
15 safety questions and the states would look at the
16 economic and alternative questions in parallel?

17 MR. CLEARY: There are several states that
18 made that very point, that if whatever need we had for
19 the economics should go to the state.

20 COMMISSIONER REMICK: Am I correct in my
21 understanding, we look at alternatives to see which
22 are -- what alternatives might be environmentally more
23 suitable, less impact. We don't look at alternatives
24 to see which would be the lower cost. But when we
25 look at the alternatives from an environmental

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1 standpoint of what would be more environmentally
2 acceptable, we have to look at the costs because in
3 the end we have to make an overall cost benefit
4 balance. Am I correct?

5 MR. MALSCH: That's essentially it. The
6 issue arises in two parts of the alternative
7 evaluation issue of economics. The first part arises
8 in considering what alternatives are even feasible and
9 deserve further evaluation. In that context, I think
10 we have and I suspect we still may rule out
11 alternatives on purely economic grounds. One can
12 imagine alternatives which are wonderful, have minor
13 environmental impacts, but the costs are so exorbitant
14 they're not even feasible and worth considering
15 further. That's the first time in which economics
16 poses a question. That's the very scope of the
17 alternative evaluation.

18 The second time it arises is in a
19 situation in which you actually identify a feasible
20 alternative which from a purely environmental
21 standpoint is preferable to the course of action which
22 you're proposing, and the question is, what do you do
23 at that point? Traditionally what we have done is
24 then gone on and looked at the economics and determine
25 whether the environmental advantages were offset by

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1 possible economic disadvantage.

2 COMMISSIONER REMICK: But we are not
3 looking for least cost alternatives.

4 MR. MALSCH: No.

5 COMMISSIONER REMICK: We're looking at
6 environmentally improved and the cost of GEIS.

7 MR. MALSCH: That's correct. The thrust
8 of the evaluation is looking for environmental
9 preferences.

10 COMMISSIONER REMICK: And states, aren't
11 they generally looking at things like least cost, not
12 necessarily most environmentally preferable?

13 MR. MALSCH: I'm sure it depends on how
14 the state statute is formulated.

15 COMMISSIONER REMICK: Yes, I'm sure too.
16 But in general.

17 COMMISSIONER ROGERS: Well, they're
18 grappling with this issue in terms of what they call
19 externalities.

20 MR. MALSCH: Right.

21 COMMISSIONER ROGERS: How to include
22 environmental effects on a cost basis analysis and
23 there's no uniformity I know of so far in how that's
24 to be done.

25 MR. MALSCH: That's a very difficult

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1 question which even the NRC faced in doing cost
2 benefit analyses in CP cases. How do you reduce the
3 various costs and benefits to a common denominator so
4 they can be compared in any kind of quantitative
5 sense? In fact, our regulations still on the books
6 require you to reduce all environmental impacts and
7 cost to a quantitative basis to the extent feasible.

8 COMMISSIONER REMICK: Yes. The point I
9 was trying to make, if I'm correct, that our approach
10 to considering alternatives and then the costs
11 probably are different than the typical PUC's approach
12 to alternatives. I could be wrong.

13 MR. MALSCH: And to the extent that's the
14 case, it is very easy to explain how the two agencies
15 might reach different conclusions.

16 COMMISSIONER REMICK: That's right.

17 MR. CLEARY: The last point to be made on
18 alternatives that we've had comments that if we are
19 going to use cost benefit analysis we're using it
20 inappropriately. That cost benefit analysis should be
21 used for the alternative analysis and not to make a
22 determination on just the proposed action.

23 COMMISSIONER CURTISS: Did CEQ make that
24 comment?

25 MR. CLEARY: It was EPA.

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1 COMMISSIONER REMICK: I'm not sure I
2 understand. Could you elaborate a little bit?

3 MR. CLEARY: The way we do the cost
4 benefit analysis now, it's on the proposed action.
5 Wrack up the costs and the benefits of the proposed
6 action with only incidental consideration of some of
7 the considerations about the alternatives. What the
8 comment says is that we should be doing the same
9 analysis to select the optimal alternative.

10 CHAIRMAN SELIN: Which the states would
11 never say. They don't want to select the optimal --

12 MR. CLEARY: No. No. In the workshop
13 transcript you can find, I believe, statements to the
14 effect if you insist on doing the cost benefit
15 analysis, do it this way. We've been told -- we have
16 been told by CEQ and the EPA that it's not required
17 under NEPA.

18 COMMISSIONER REMICK: How does this sit
19 with -- don't we have to strike an overall cost
20 benefit balance of the proposed action? Is that the
21 final thing we do in an EIS?

22 MR. MALSCH: That's how we have always
23 done it.

24 COMMISSIONER REMICK: Yes.

25 MR. MALSCH: Now, the question is is there

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1 another way to do it. Now, clearly there is if you're
2 talking about ways that are different from cost
3 benefit analyses which attempt to weigh and balance
4 all considerations by reducing them to one
5 quantitative measure. Now, clearly, that is not
6 required, although we've tried to do it and our
7 regulations tell us to do it to the extent that we
8 can. Clearly that is not required. The issue we're
9 grappling with is whether even assuming we don't do
10 that, whether we still have to do some sort of
11 generalized weighing and balancing in consideration of
12 economics and --

13 MR. PARLER: You certainly have to do that
14 because that's the objective of NEPA for the decision
15 maker to be aware of that balance even though the
16 decision maker is not bound by that balance in making
17 their decision.

18 MR. CLEARY: For a point of historical
19 perspective, what I see is that back in the early '70s
20 when the Agency was developing its approach to doing
21 a NEPA analysis, it adopted the model that was used by
22 federal agencies that are undertaking their own
23 project. That is we adopted the applicant's proposal,
24 the applicant's project and then proceeded to
25 determine what analysis we needed to do relative to

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1 that project. That's one of the things that we're
2 looking at now, whether there are some alternative
3 approaches rather than putting ourselves in the place
4 of the applicant or society at large.

5 (Slide) Slide 14.

6 The comments on alternative energy sources
7 raised a question of what should be the role and the
8 scope of review of alternative energy sources in the
9 EIS. Remember that alternatives are defined by the
10 underlying need for the proposed federal action. A
11 basic question that must be considered is should
12 renewal of an operating license be denied on the basis
13 of identification of an environmental preferably
14 alternative energy source? Current practice seems to
15 imply that a license could be denied.

16 The next issue is that of economic costs.
17 Economic cost is given considerable weight in the GEIS
18 as we've discussed. The question is what role should
19 economic cost play in the evaluation of alternative
20 energy sources. Another issue is whether a full
21 scoped cost benefit analysis is required to support
22 our decision, licensing decision. And finally, to
23 what extent can NRC adopt a state's determination of
24 license renewal relative to alternative energy
25 sources. Not license renewal, but continued operation

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1 of the proposed plant relative to alternative energy
2 sources.

3 COMMISSIONER ROGERS: Don, before you go
4 off that, on the second bullet, the denial of an
5 operating license renewal based on an environmentally
6 preferable alternative energy source, how do you deal
7 with conservation? I mean there are some people who
8 like to call conservation an alternative energy
9 source. To me they're not the same, but there are
10 many who are arguing that basically they should be,
11 conservation should be included along with other
12 sources of energy, even though it's not a source.

13 How do you deal with that? Who's to
14 really determine how much conservation can be carried
15 out? You could always, it would seem to me, do a
16 calculation that would show that you could conserve
17 away any plant.

18 MR. MALSCH: That was actually in almost
19 all relatively modern environmental impact statements
20 done by the NRC on construction permit cases. There
21 was an evaluation of energy conservation, not in the
22 context of doing it as an alternative, but in the
23 context of is this plant really needed. In, I think,
24 every case, the NRC managed to conclude that energy
25 conservation not be substituted for the plant.

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1 MR. KING: That's where it's treated in
2 the GEIS, the need for power section and assumptions
3 were made on conservation as well as increased demand.

4 COMMISSIONER ROGERS: Well, suppose
5 somebody tried to bring it in here on the basis of
6 environmentally preferable sources. How do you keep
7 it out?

8 MR. MALSCH: I don't think you can, at
9 least not using our traditional NEPA approach. In
10 fact, there were many contested hearings involving
11 energy -- some contested hearings involving energy
12 conservation.

13 COMMISSIONER de PLANQUE: Also, on the
14 same bullet, could you expand upon what you said? You
15 said current practice would indicate that the answer
16 to that is yes. Did I hear that correctly?

17 MR. CLEARY: Yes.

18 COMMISSIONER de PLANQUE: Could you expand
19 upon that?

20 MR. CLEARY: Yes. The Part 51, for staff
21 purposes, is interpreted in the Environmental Standard
22 Review Plan, NUREG-0555. In that document, it's
23 specific, you do the alternative analysis. If there's
24 an environmentally preferable alternative, you go on
25 to look at other considerations. Then, if those other

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1 considerations don't tip the balance or give you
2 reason to reject the environmental preferably
3 alternative, then the decision -- the recommendation
4 and the question as to what do we mean by decision,
5 but the staff recommendation then is that the
6 applicant go look at the other alternative.

7 COMMISSIONER de PLANQUE: Have we ever
8 done that?

9 MR. CLEARY: Not that I'm aware of.

10 MR. MALSCH: We have, I think, in a few
11 cases insisted on adoption of not an environmentally
12 preferable source of energy, but an environmentally
13 preferable system of alternatives. For example,
14 alternative transmission line corridors or alternative
15 locations for intake structures and things of this
16 sort.

17 COMMISSIONER de PLANQUE: Ah, but that's
18 not an alternative energy source.

19 MR. MALSCH: No, no, no. I don't believe
20 we've ever actually proposed to deny an application on
21 the ground that the plant was in need to do an
22 alternative source.

23 COMMISSIONER de PLANQUE: I'm still not
24 sure I understand what the current practice is that
25 would indicate the answer to that is yes.

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1 MR. CLEARY: Well, the way the
2 requirements in the standard review plan would
3 indicate, that if we did and if we could not find the
4 reason that an alternative were preferable, then the
5 recommendation would have to be that the utility
6 should go with that alternative and by implication the
7 license would be denied. Fortunately as far as I
8 know, we've never faced that.

9 COMMISSIONER de PLANQUE: So, in current
10 practice, you're referring to the way in which the
11 regulations are spelled out, not what we have actually
12 done or what has been done.

13 MR. CLEARY: That's right.

14 COMMISSIONER de PLANQUE: Okay.

15 MR. CLEARY: The way the analysis is
16 structured and the decision process and how you do
17 your analysis and how you get to the bottom line and
18 the implications of that bottom line, that has been
19 spelled out in Reg. Guide 4.2 since the Revision 2,
20 since 1976 and in the standard review plan since 1979.

21 COMMISSIONER de PLANQUE: But we've never
22 denied a license on that basis?

23 COMMISSIONER CURTISS: Marty, just a point
24 of clarification. Does the obviously superior
25 standard that applies to alternate sites apply here?

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1 MR. MALSCH: I see no reason why it
2 wouldn't.

3 COMMISSIONER CURTISS: So, it would have
4 to be an obviously superior alternative as it would
5 for sites for alternative energy sources?

6 MR. MALSCH: Right.

7 MR. PARLER: If the Commission would
8 decide in a particular case to adopt the
9 recommendation that probably would be made that it
10 should be extended from sites to energy sources --

11 COMMISSIONER REMICK: I'm on the same
12 second bullet. We all seem to be attracted to that.
13 I'll give you two examples, one that appears obvious
14 to me and the other I'm not quite sure. Remembering
15 that we're talking to need here, or the purpose is the
16 renewal of a license of an existing facility, but in
17 the analysis suppose that it was proposed that another
18 alternative was more environmentally acceptable. Let
19 me must hypothesize. It may be a dam, if the utility
20 built a dam. Let's hypothesize that they could say
21 that that's more environmentally acceptable. I
22 assume, however, if it was not cost beneficial, that
23 would not be the basis to deny the renewal. In other
24 words, if this was building a new dam, obviously
25 presumably would be very expensive and so forth. So,

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1 I assume we wouldn't automatically deny the license
2 just because we'd have to admit that hypothetically
3 environmentally this was more acceptable.

4 Now, the second one is not so clear to me.
5 Suppose that once again we have the dam,
6 environmentally preferable, maybe even from a cost
7 benefit marginal and so forth. But the company will
8 not build a dam. They just aren't interested in
9 building a dam, for whatever reason. They might have
10 sound technical reasons. What do we do in a case like
11 that? Let's hypothesize it's environmentally
12 acceptable.

13 MR. MALSCH: Actually, that scenario was
14 thought about years ago in terms of what would we
15 actually do. I'm not sure what we would actually do,
16 but what was suggested was a proposed denial that
17 would site for awhile to determine whether the
18 applicant would change positions or pressure would be
19 brought to bear by other relevant agencies to get the
20 applicant to change positions and then reexamine the
21 question. But we never actually had to confront it.

22 COMMISSIONER REMICK: And it is a
23 different situation when you have an existing
24 generating plant compared to construction permits.
25 Thank you.

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1 MR. CLEARY: (Slide) I believe we're on
2 page 15, economic costs. Actually we've talked quite
3 a bit about economic costs so far in this discussion.
4 So, I'll see if I can just skip through this and make
5 a few major points.

6 The regulatory authority over utility
7 economics resides in the states. We've had comments
8 that we've had too heavy emphasis on economic analysis
9 in that we should not be using economic decision
10 criteria. The issues are how are we going to handle--
11 what's the role of economics in the alternative
12 analysis and in the cost benefit analysis.

13 CHAIRMAN SELIN: You have an interesting
14 statement here, but I'm not sure I agree with it, that
15 there must be consistency in the use of economic costs
16 at the license renewal stage. I assume meaning
17 compared to other stages of licensing.

18 MR. CLEARY: Other licensing actions, yes.

19 CHAIRMAN SELIN: Because the uncertainties
20 are so much less at this stage than in any other type
21 of licensing in that you -- you know, to quote our old
22 Marxist friends, the difference in quantity eventually
23 becomes the difference in quality. You really know
24 what the environmental impacts are, you know what it
25 would cost to continue. You don't know any of those

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1 things about the alternatives.

2 Take Commissioner Remick's case. We don't
3 know anything about building dams. We don't know what
4 it would really cost to build a dam and what the
5 environmental impact is. To compare a real concrete
6 alternative like this with a bunch of theoretical ones
7 is different from what we would do in construction
8 licensing or some other situation. I wonder if that
9 statement really should go without some consideration.
10 This is a process which is qualitatively different
11 from the other processes in which we do licensing.

12 MR. CLEARY: I think it was intended in
13 the context of overall approach to complying with NEPA
14 because NEPA applies to a whole variety of federal
15 actions. If we were to decide hypothetically we will
16 not consider economics in any environmental impact
17 statement because NEPA doesn't require it, then that
18 raises the question of whether that shouldn't be the
19 same principle that we'd follow in running impact
20 statements for fuel cycle plants. That's the only
21 issue we're raising. There are obviously differences
22 in terms of how you go about doing that.

23 (Slide) Going to page 16.

24 The fourth topic to cover is cost benefit
25 analysis. I'll point out once again that the approach

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1 to cost benefit analysis used in the GEIS is
2 consistent with the way we've been doing cost benefit
3 analyses in EISS for nuclear power plants since at
4 least the mid-'70s. The comments that were raised
5 relative to NRC's use of cost benefit analyses that
6 were raised by federal, industry, state, and other
7 commenters, we got quite a few comments on how we do
8 cost benefit analyses.

9 There's a basic question of whether NRC
10 should be using cost benefit analysis as a decision
11 tool and there were many comments going to the methods
12 employed and the information deficiencies in our cost
13 benefit analyses. There was also a point that I
14 previously made that cost benefit analyses, if used,
15 should be done across the board on alternatives and
16 not just to the determination of the proposed action.

17 And then an example of a methodological
18 observation is that there is some double counting in
19 the way we've racked up the table, and that was
20 pointed out to us. We were taking credit both for the
21 direct net economic benefits of license renewal on one
22 hand and on the other hand taking credit for the cost
23 avoided by not replacing with a coal fired option and
24 both use much of the same costs for the calculation.

25 And finally, the major point is that cost

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1 benefit balancing is not required by NEPA. CEQ
2 regulations say that, if an agency does use cost
3 benefit analyses in its planning and decision-making
4 process, that the environmental NEPA consideration
5 should be put on top of that, but nowhere is cost
6 benefit analysis required.

7 And that concludes my comments on the
8 issues.

9 CHAIRMAN SELIN: I really need to go back
10 to something Mr. Malsch said. The situation with fuel
11 plants is just not the same in the sense that in broad
12 terms you really have three questions to answer.

13 One is, have the safety considerations
14 been taken into account outside the EIA?

15 The second is, have the environmental
16 implications been taken into account? Is there
17 another way roughly comparable economically to get the
18 required energy that can be done in a less harmful
19 environmental way?

20 And then the third is, have the economic
21 considerations been taken into account, both whether
22 the energy is needed and whether it's provided
23 economically through life extension which will be
24 dealt with by the public utility? In a facility,
25 there is no public utility commission at the end.

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1 Those costs are not directly passed to ratepayers.
2 They're passed to the customers.

3 So, if you look at the overall process,
4 this is different from a facility process. It is
5 comparable to an electrical generation process.

6 MR. MALSCH: You still can have economics
7 enter into the picture. For example, let's suppose
8 you identify an environmentally preferable process in
9 fuel processing. What would your basis be for
10 projecting that? Well, traditionally it has been,
11 well, let's look at the economics of the process as
12 opposed to the economics of the proposed process.

13 CHAIRMAN SELIN: The point is that in the
14 fuel plant you have to look at the economics. There's
15 no back-up state regulatory process.

16 MR. MALSCH: That's correct. There is no
17 recourse.

18 CHAIRMAN SELIN: Commissioner de Planque?

19 COMMISSIONER de PLANQUE: In the SECY
20 paper on page 7 on the cost benefit balancing, the
21 last item, item 4, can you explain that one? I'm not
22 quite sure what they're saying there.

23 MR. CLEARY: Item 4 says that cost benefit
24 balancing goes beyond the requirements of NEPA and
25 beyond the requirements laid out in CEQ's regulations.

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1 COMMISSIONER de PLANQUE: What's the
2 cumulative effects part?

3 MR. CLEARY: The cumulative, that is
4 required under NEPA and the CEQ regulations that we're
5 supposed to look at the total cumulative environmental
6 effects of a proposed action and the alternatives.
7 For example, cumulative effects would be with regard
8 to a certain type of effluent over time.

9 COMMISSIONER de PLANQUE: Yes, but are we
10 talking about a single license renewal and therefore
11 a single plant or are we talking about nationwide?
12 What does the "cumulative" refer to?

13 MR. CLEARY: In the context of this
14 rulemaking, it would be for single plants.

15 COMMISSIONER de PLANQUE: Okay.

16 CHAIRMAN SELIN: This is such a thought
17 provoking briefing that your best advice is to keep
18 talking until you're specifically interrupted and not
19 look around to see if there are more questions.

20 MR. KING: All right. Well, let me wrap
21 this up then.

22 Talking about the schedule which is shown
23 on page 18, the first two bullets shown on page 18
24 really are near-term milestones.

25 The first one deals with our plan to meet

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1 with EPA on their technical comments during March and
2 April. EPA had about 30 pages of technical comments
3 which they submitted on the Rule and the GEIS.
4 Because of their experience and expertise in
5 environmental reviews, we feel it's important to reach
6 agreement with them on the technical issues. In
7 addition we feel it's important to do this early so
8 that the results can be reflected in subsequent work
9 in completing this rulemaking, so that's the reason
10 we're going ahead and concentrating on the EPA
11 technical comments first as far as the remaining work
12 to be done.

13 The second bullet talks about our schedule
14 for getting back to the Commission with
15 recommendations on the four policy issues we talked
16 about today. That's scheduled for May right now. In
17 doing that, we also plan to have discussions with CEQ
18 and EPA because we would like to get their views
19 factored into the paper before it comes back to the
20 Commission. In conjunction with that, there's an open
21 question that we have in the Commission paper. Since
22 the policy issues result mainly from state comments,
23 we're asking for guidance on whether you would like us
24 to go get some feedback from the states on these
25 policy issues and factor that into the paper before it

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1 comes to your desk. It's currently not in our plans.
2 If you would like us to do that, it will add some time
3 to the schedule. We estimate three months at this
4 point.

5 The other bullets on page 18 are the
6 longer-range milestones which complete revision of the
7 Rule and the GEIS and consider the rest of the
8 comments. As we discussed in SECY-92-198 last year,
9 we're planning to provide CEQ and EPA an opportunity
10 to review the final product, rulemaking package and
11 GEIS, prior to sending it to the Commission for final
12 approval. Right now we've scheduled for December of
13 this year to get that package to EPA and CEQ. They've
14 indicated it will take three or four months for them
15 to review it and get back to us. That would then put
16 providing the package to the Commission in April of
17 '94.

18 CHAIRMAN SELIN: Have we actually
19 committed to sending them the next package before it's
20 published for general comment?

21 MR. KING: We have asked them if they
22 would be willing to do that and they have said they
23 would. I don't think we're locked into a commitment
24 to do that.

25 And then as we had said, again in SECY-92-

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1 198, the work on the reg. guide and the standard
2 review plan we are going to defer until after the
3 final rulemaking is published. We're estimating that
4 will be completed about six months after publication
5 of the final rule.

6 With that, that completes the briefing.

7 Any further questions?

8 CHAIRMAN SELIN: I have one legal question
9 for General Counsel. It's sort of hypothetical and
10 you may decide you don't want to answer it at this
11 point, but is the rule that's likely to come out of
12 this close enough to the rule we published that the
13 next step could actually be to publish a final rule or
14 are we going to have to ask for comments again?

15 MR. PARLER: I couldn't answer that
16 question until I see what the rule is that is proposed
17 to come out. The general guidance is, if the proposed
18 rule that we put out was adequate to put people on
19 notice to what turns out to be the final product --
20 and we have looked at that very carefully in other
21 areas, some of which have been controversial -- then
22 we would not have to notice it. But if not, then we
23 would. And that's something that I or whoever or
24 Marty will advise you on at the appropriate time.

25 CHAIRMAN SELIN: Commissioner Rogers?

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1 COMMISSIONER ROGERS: I have nothing.

2 CHAIRMAN SELIN: Commissioner Curtiss?

3 COMMISSIONER CURTISS: I don't have any
4 other questions. I had a suggestion maybe just in the
5 spirit of a presage as to what I'll speak to more
6 formally when we act on the paper that's before us.

7 It does seem to me that the discussion
8 here, at least my own perspective, is none of us has
9 been through, recently at least, a process where all
10 of these NEPA questions have come before the
11 Commission. We've got a -- at least, I don't have a
12 good understanding of how we've done things in the
13 past and it would be useful, I think -- my own
14 preference would be for you to come back to the
15 Commission in May of '93 prior to going to talk to the
16 states with your recommendations on the policy issues
17 and at that time include some descriptive primer type
18 material on how these issues have been handled in the
19 past in various contexts to give us some context to
20 address the kinds of questions that we've had here.

21 It seems to me that that background
22 together with the fact that the options are of great
23 interest to the Commission might argue in favor of
24 coming to the Commission first and, in my own personal
25 view, I think that would be the way to go if at that

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1 point based on what we have it looks like a round of
2 state comment either to further elucidate what it is
3 that they're suggesting or to get further reactions
4 from them on the options that you'll be proposing, if
5 that would be appropriate. Of course, that wouldn't
6 be foreclosed by coming to the Commission first, but
7 my own purposes would benefit from that discussion,
8 not only the background but then of the
9 recommendations on each of the four policy issues.

10 Other than that, I thought it was a good
11 briefing and a fascinating issue.

12 CHAIRMAN SELIN: Commissioner Remick?

13 Commissioner de Planque?

14 COMMISSIONER de PLANQUE: Yes, just
15 another question on going to the states. Is there any
16 obvious down side other than a three month delay,
17 whether you were to do that now or to do that in the
18 order that Commissioner Curtiss was suggesting?

19 MR. KING: I don't think we've identified
20 any down side other than in schedule at this point.

21 COMMISSIONER de PLANQUE: And if you went
22 back to them at this point, would you expect to get
23 comments that are much different or more extensive
24 than you've already gotten?

25 MR. KING: Well, we would go back to them

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1 on what our proposal is to deal with the four policy
2 issues and see if that's --

3 COMMISSIONER de PLANQUE: And get
4 specifics on those.

5 MR. KING: Yes, and see if our
6 recommendation is consistent with their concerns and
7 be able to factor that into our recommendation to you.
8 We wouldn't go back and tell them to comment again on
9 the whole GEIS routine.

10 COMMISSIONER de PLANQUE: Right. Okay.
11 Thanks.

12 MR. KING: Let me offer one point of
13 clarification, Mr. Chairman, on your point on whether
14 we're locked into going back to CEQ and EPA. The
15 answer is no, but Don reminded me that EPA will review
16 this final rule package. If we wait until it's
17 approved by the Commission and published, they by
18 statute are obligated to review it and comment on it,
19 so I think the question is --

20 CHAIRMAN SELIN: Before it's published?

21 MR. KING: After it's published.

22 CHAIRMAN SELIN: After it's published.

23 MR. KING: Then the question is, do we
24 want to get that before it's published and get some
25 feedback from them or do we want to wait until the

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1 end?

2 CHAIRMAN SELIN: I just would like to, in
3 wrapping up, attach myself to Commissioner Curtiss'
4 comments. This is a very good presentation, very good
5 pitch, but I would just like to emphasize the simple
6 things that we're trying to do and not lose track of
7 these as we get into these legal and procedural
8 complexities.

9 One is trying to make sure, not just in
10 the EIS, that the safety issues and the environmental
11 issues are addressed -- and those are issues that, if
12 they're not addressed at our level, are not likely to
13 be addressed -- and to try to avoid crazy things from
14 an economic or a requirements point of view, knowing
15 that those will be addressed elsewhere. I hope that
16 when you look at these things you will come back to
17 basic principles, not say "How close is this to the
18 way we would handle a construction permit or some
19 other piece?" but what are we trying to do and are we
20 consistent with the law in the way we're doing it or
21 are we so different from either the law or past
22 practice that we're just setting up a highly
23 challengeable piece.

24 The second is there's been an enormous
25 amount of comment on these already. If you do decide

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1 that you want to go back to the states, I hope it's
2 because you really think that there's something that
3 they're going to tell us that we don't expect as
4 opposed to just good manners that it's nice to get
5 people to take a look at it, similarly with CEQ and
6 EPA.

7 This has been extensively discussed and we
8 sort of know already in general what people's
9 positions will be and, you know, we do have to get on
10 with the work. So, if there's good reason -- I mean,
11 if we really need to know what people's reactions are,
12 there are some choices that are certainly open. You
13 know, I'm certainly amenable to the discussions, but
14 we're trying to do a fairly simple thing with the
15 environmental impact statement and I hope we don't get
16 distracted from what that simple thing is.

17 With that just sort of simple admonition,
18 thank you very much for the presentation and of course
19 we'll be very interested in what happens from here on
20 in.

21 (Whereupon, at 3:41 p.m., the above-
22 entitled matter was concluded.)
23
24

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TITLE OF MEETING: BRIEFING ON STATUS OF ISSUES AND APPROACH
TO GEIS RULEMAKING FOR PART 51

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: FEBRUARY 19, 1993

were transcribed by me. I further certify that said transcription
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U.S. NUCLEAR REGULATORY COMMISSION

**LICENSE RENEWAL ENVIRONMENTAL
PROTECTION RULEMAKING**

COMMISSION BRIEFING

**BY THE
OFFICE OF NUCLEAR REGULATORY RESEARCH**

**THOMAS L. KING
DONALD P. CLEARY**

**AND THE
OFFICE OF THE GENERAL COUNSEL**

MARTIN G. MALSCH

FEBRUARY 19, 1993

OUTLINE OF BRIEFING

- o PURPOSE AND OBJECTIVE OF BRIEFING**
- o BACKGROUND**
- o COMMENT SUMMARY**
- o AGREEMENT WITH CEQ AND EPA**
- o POLICY ISSUES**
- o SCHEDULE**

PURPOSE AND OBJECTIVE

- o **TO INFORM THE COMMISSION OF COMMENTS RECEIVED AND TO IDENTIFY THOSE WITH POTENTIAL POLICY IMPLICATIONS**
- o **TO INFORM THE COMMISSION OF THE RESULTS OF AGREEMENTS WITH THE COUNCIL ON ENVIRONMENTAL QUALITY (CEQ) AND THE ENVIRONMENTAL PROTECTION AGENCY (EPA) REGARDING CONSISTENCY OF THE PROPOSED ACTION WITH NEPA AND TO SOLICIT COMMISSION APPROVAL OF THE AGREEMENT**
- o **TO INFORM THE COMMISSION OF THE STAFF'S PLANS AND SCHEDULE FOR COMPLETION OF THE RULEMAKING**

BACKGROUND

- o **PROPOSED PART 51 RULECHANGE IN SUPPORT OF LICENSE RENEWAL ISSUED FOR COMMENT ON SEPT. 17, 1991:**
 - **180 DAY COMMENT PERIOD**
 - **WORKSHOP - 11/91**
- o **PROPOSED GENERIC TREATMENT OF AS MANY ENVIRONMENTAL ISSUES ASSOCIATED WITH LICENSE RENEWAL AS POSSIBLE:**
 - **GENERIC ENVIRONMENTAL IMPACT STATEMENT**
 - **SAME SCOPE OF ISSUES AS THE MOST RECENT PLANT SPECIFIC EISs**
 - **FOCUSED ON THE IMPACT OF PLANT REFURBISHMENT AND 20 YEARS OF ADDITIONAL OPERATION**
 - **IMPACTS CODIFIED IN RULE**
 - **ENVIRONMENTAL ASSESSMENT ALLOWED**

COMMENT SUMMARY

- o COMMENTS FROM WRITTEN SUBMISSIONS AND THE TRANSCRIPT OF PUBLIC WORKSHOP ON RULE AND GEIS**
- o TOTAL OF 133 ORGANIZATIONS AND INDIVIDUALS HAVE COMMENTED**
 - 5 FEDERAL AGENCIES**
 - 24 STATES**
 - 5 REGIONAL AND LOCAL GOVERNMENT ORG**
 - 36 NUCLEAR INDUSTRY**
 - 19 PUBLIC INTEREST GROUPS**
 - 44 INDIVIDUALS**
- o 1,021 INDIVIDUAL COMMENTS**
- o GROUPED INTO 347 CONCERNS**
- o UNDER 16 SPECIFIC TOPICS**

COMMENT - CONTINUED

<u>TOPIC</u>	<u># CONCERNS</u>	<u># COMMENTS</u>
o GEIS	26	80
o COMPLIANCE WITH NEPA AND 10 CFR 51	19	144
o LICENSE RENEWAL SCENARIO	14	23
o AQUATIC ECOLOGY	19	37
o AIR QUALITY	2	3
o GROUNDWATER	8	11
o SURFACE WATER QUALITY	16	26
o TERRESTRIAL ECOLOGY AND LAND USE	19	42
o HUMAN HEALTH	48	78
o POSTULATED ACCIDENTS	32	70
o DECOMMISSIONING	13	26
o SOLID WASTE MANAGEMENT	46	138
o SOCIOECONOMICS	16	42
o NEED FOR GEN. CAPACITY	20	73
o ALTERNATIVES TO L.R.	42	202
o REGULATORY GUIDE	<u>7</u>	<u>26</u>
	347	1,021

AGREEMENT REACHED WITH CEQ AND EPA

MODIFY CERTAIN PROCEDURAL ASPECTS OF THE PROPOSED RULE

- o SUPPLEMENTAL SITE-SPECIFIC EIS**
- o NO CONDITIONAL COST-BENEFIT CONCLUSION
IN RULE AND GEIS--CONCLUSION ON
ENVIRONMENTAL IMPACTS WILL BE MADE IN
INDIVIDUAL LICENSE RENEWAL REVIEWS**
- o DRAFT SUPPLEMENTAL EIS WILL BE ISSUED FOR
PUBLIC COMMENT**
- o ALL PUBLIC COMMENTS WILL BE REVIEWED**
- o COMMENTS ON UNBOUNDED CATEGORY 2
ISSUES AND CATEGORY 3 ISSUES AND
FACTUAL CHALLENGES TO BOUNDING CRITERIA
FOR A CATEGORY 2 ISSUE WILL BE ADDRESSED
IN FINAL SUPPLEMENTAL EIS**

AGREEMENT - CONTINUED

- o **COMMENTS ON CATEGORY 1 ISSUES AND BOUNDED CATEGORY 2 ISSUES WILL BE REVIEWED AND IF THEY CONTAIN NEW AND SIGNIFICANT INFORMATION WILL BE ADDRESSED:**
 - **IN THE SUPPLEMENTAL EIS (IF PLANT SPECIFIC) WITH A WAIVER OF THE RULE**
 - **BY RULECHANGE OR SUSPENSION (IF GENERIC)**
- o **IF DISSATISFIED WITH A STAFF DETERMINATION THAT INFORMATION IS NOT NEW AND SIGNIFICANT, A COMMENTER MAY FILE A PETITION FOR RULEMAKING UNDER 10 CFR 2.802 OR SEEK WAIVER UNDER 10 CFR 2.758**

AGREEMENT - CONTINUED

- o **A HEARING WILL BE LIMITED TO UNBOUNDED CATEGORY 2 AND CATEGORY 3 ISSUES UNLESS THE RULE IS SUSPENDED OR WAIVED.**
- o **GEIS AND RULE WILL BE REVIEWED AND UPDATED EVERY 10 YEARS USING EXISTING PROCEDURES**
- o **UNDER EXISTING 10 CFR 2.802, A PETITION FOR RULEMAKING TO AMEND RULE AND GEIS MAY BE SUBMITTED AT ANYTIME**

POLICY ISSUES

- o ARE BEING HIGHLIGHTED NOW TO GIVE ADVANCE NOTICE OF AREAS WHERE THE COMMISSION MAY BE ASKED TO PROVIDE GUIDANCE**
- o FOUR AREAS WITH POTENTIAL POLICY ISSUES IDENTIFIED:**
 - NEED FOR GENERATING CAPACITY**
 - ALTERNATIVE SOURCES OF ENERGY**
 - ECONOMIC COSTS**
 - COST-BENEFIT BALANCING**
- o THE ISSUES IN THESE AREAS INVOLVE THE SCOPE AND FOCUS OF NRC'S NEPA REVIEW FOR LICENSE RENEWAL**
- o THESE ISSUES MUST BE TREATED CONSISTENTLY IN 10 CFR PART 51 FOR ALL NRC LICENSING ACTIONS**
- o STAFF WILL BE PROVIDING A RECOMMENDED POSITION ON EACH OF THESE ISSUES**

NEED FOR GENERATING CAPACITY

o COMMENTS RAISING POLICY ISSUES:

- **NRC's INCLUSION OF NEED FORECASTS IN GEIS AND RULE HAS PRACTICAL EFFECT OF INTERFERING WITH STATE REGULATORY AUTHORITY TO DETERMINE NEED**
- **ACCURATE FORECASTS OF NEED CANNOT BE MADE SO FAR IN ADVANCE OF LICENSE RENEWAL**
- **CHANGE FROM CATEGORY 1 TO CATEGORY 3 TO ALLOW FOR MEANINGFUL PUBLIC PARTICIPATION**
- **NRC SHOULD USE THE STATE DETERMINATION OF NEED IN ITS NEPA REVIEW**

NEED FOR GENERATING CAPACITY (CONTINUED)

- o PRIMARY ISSUE: TO WHAT EXTENT SHOULD NRC CONTINUE TO ADDRESS NEED FOR GENERATING CAPACITY IN EISs?**
 - RELATED TO DEFINITION OF "PROPOSED FEDERAL ACTION" AND "NEED" FOR THAT ACTION**
 - WHAT ROLE SHOULD "NEED" HAVE IN THE DETERMINATION WHETHER TO RENEW AN OPERATING LICENSE--WOULD A LICENSE BE DENIED BASED ON NEED FOR GENERATING CAPACITY CONSIDERATIONS?**
 - TREATMENT OF "NEED" AT LICENSE RENEWAL STAGE AND OTHER STAGES OF LICENSING**
 - WHATEVER THE LEVEL OF TREATMENT OF NEED FOR GENERATING CAPACITY IN THE GEIS AND SUPPLEMENTAL EIS, TO WHAT EXTENT CAN NRC ADOPT A STATES DETERMINATION OF NEED?**

ALTERNATIVE ENERGY SOURCES

o COMMENTS RAISING POLICY ISSUES:

- **STATES HAVE AUTHORITY TO DETERMINE ENERGY MIX**
- **COMPARISON OF ALTERNATIVES SHOULD EMPHASIZE ENVIRONMENTAL CONSEQUENCES RATHER THAN ECONOMIC COSTS**
- **AN ECONOMIC THRESHOLD TEST TO TRIGGER A FURTHER CONSIDERATION OF ALTERNATIVES IS INAPPROPRIATE IN A NEPA ANALYSIS**
- **IF COST-BENEFIT ANALYSIS IS USED IT SHOULD BE USED TO COMPARE ALTERNATIVES RATHER THAN JUST TO MAKE A DETERMINATION ON THE PROPOSED ACTION**

ALTERNATIVE ENERGY SOURCES (CONTINUED)

- o PRIMARY ISSUE: WHAT SHOULD BE THE ROLE AND THE SCOPE OF REVIEW OF ALTERNATIVE ENERGY SOURCES IN EISs?**
 - RELATED TO DEFINITION OF "NEED" FOR THE PROPOSED FEDERAL ACTION**
 - SHOULD RENEWAL OF AN OPERATING LICENSE BE DENIED BASED ON IDENTIFICATION OF AN ENVIRONMENTALLY PREFERABLE ALTERNATIVE ENERGY SOURCE?**
 - WHAT ROLE SHOULD ECONOMIC COSTS PLAY IN THE REVIEW OF ALTERNATIVE ENERGY SOURCES?**
 - IS A FULL COST-BENEFIT ANALYSIS OF ALTERNATIVE ENERGY SOURCES REQUIRED TO SUPPORT AN NRC LICENSE RENEWAL DECISION?**
 - TO WHAT EXTENT CAN NRC ADOPT A STATES DETERMINATION OF THE ROLE OF CONTINUED OPERATION OF A NUCLEAR POWER PLANT RELATIVE TO ALTERNATIVE ENERGY SOURCES?**

ECONOMIC COSTS

- o COMMENTS RAISING POLICY ISSUES:**
 - REGULATORY AUTHORITY OVER UTILITY ECONOMICS RESIDES IN THE STATES--AND TO SOME EXTENT IN THE FEDERAL ENERGY REGULATORY COMMISSION**
 - NRC'S HEAVY EMPHASIS ON ECONOMIC ANALYSIS AND ECONOMIC DECISION CRITERIA HAS THE PRACTICAL EFFECT OF INTERFERING WITH STATE AUTHORITY**
 - FOR A NEPA REVIEW, UNDUE EMPHASIS IS GIVEN TO ECONOMIC COSTS**
- o PRIMARY ISSUE: TO WHAT EXTENT SHOULD NRC CONTINUE TO ADDRESS ECONOMIC COSTS IN EISs?**
 - WHERE IN THE LICENSE RENEWAL DECISION PROCESS SHOULD ECONOMIC COSTS BE CONSIDERED?**
 - THERE MUST BE CONSISTENCY IN THE USE OF ECONOMIC COSTS AT THE LICENSE RENEWAL STAGE AND OTHER STAGES OF LICENSING**

COST-BENEFIT BALANCING

- o COMMENTS RAISING POLICY ISSUES:**
 - INCOMPLETE COVERAGE OF BOTH ENVIRONMENTAL IMPACTS AND ECONOMIC COSTS**
 - SHOULD BE USED TO COMPARE ALTERNATIVES RATHER THAN JUST TO MAKE A DETERMINATION ON THE PROPOSED ACTION**
 - THERE IS DOUBLE COUNTING IN THE ITEMS INCLUDED IN DIRECT COSTS AND AVOIDED COSTS**
 - A COST-BENEFIT BALANCING IS NOT REQUIRED BY NEPA**

COST-BENEFIT BALANCING (CONTINUED)

- o **PRIMARY ISSUE: SHOULD NRC CONTINUE TO PERFORM BROADLY SCOPED COST-BENEFIT BALANCING IN EISs?**
 - **SHOULD IT BE PERFORMED TO EVALUATE ALTERNATIVES RATHER THAN ONLY THE PROPOSED ACTION?**
 - **ANALYSIS WOULD BE INFLUENCED BY ANY CHANGE IN THE DEFINITION OF "NEED FOR THE PROPOSED FEDERAL ACTION"**

SCHEDULE

- o MEETINGS WITH EPA ON THEIR TECHNICAL CONCERNS - 3/93-4/93
- o PAPER TO COMMISSION ON PROPOSED RESOLUTION OF POLICY ISSUES (INCLUDES TIME FOR DISCUSSION WITH CEQ*/EPA) - 5/93**
- o FINAL DRAFT OF RULE PACKAGE TO CEQ AND EPA FOR REVIEW - 12/93
- o FINAL LETTERS FROM CEQ* AND EPA - 3/94
- o FINAL RULE PACKAGE TO COMMISSION - 4/94
- o PUBLISH FINAL REGULATORY GUIDE AND STANDARD REVIEW PLAN - 12/94

* THE ROLE OF CEQ IN FUTURE DISCUSSIONS AND REVIEWS IS YET TO BE DETERMINED DUE TO THE PRESIDENT'S DECISION TO ABOLISH CEQ AND INCORPORATE ITS FUNCTIONS IN THE WHITE HOUSE STAFF

** COULD SLIP 3 MONTHS IF DISCUSSION WITH STATES IS DESIRED.



POLICY ISSUE **(Notation Vote)**

February 9, 1993

SECY-93-032

For: The Commissioners

From: James M. Taylor
Executive Director for Operations

Subject: 10 CFR PART 51 RULEMAKING ON ENVIRONMENTAL
REVIEW FOR RENEWAL OF NUCLEAR POWER PLANT
OPERATING LICENSES

Purpose: To request Commission approval regarding the resolution of comments about the procedural aspects of the subject proposed rule raised by the Council on Environmental Quality and the Environmental Protection Agency, and to inform the Commission of additional policy issues associated with comments on NRC's treatment of need for generating capacity, alternative energy sources, economic costs, and cost-benefit balancing, and the overall status and schedule of the rulemaking.

Background: In SECY-92-198, dated May 29, 1992, the staff informed the Commission of plans to address major concerns received from the Council on Environmental Quality (CEQ), the Environmental Protection Agency (EPA), various states, and others about the subject proposed rule. A summary of CEQ and EPA concerns about the adequacy of procedural provisions of the proposed rule was provided. The staff identified three basic options for proceeding with the final rule. These options were: 1) retain the approach in the proposed rule, 2) modify the rule to address policy concerns but maintain essential exclusion features, and 3) abandon the proposed rule and use the Generic Environmental Impact Statement (GEIS) as a "tiering" (reference) document. The staff informed the

Contact:
Donald P. Cleary, RES
(301) 492-3936

NOTE: TO BE MADE PUBLICLY AVAILABLE
WHEN THE FINAL SRM IS MADE
AVAILABLE

Commission of its intent to discuss the major provisions of option 2 with CEQ and EPA. These discussions have been concluded. Letters setting forth the proposed provisions of the rule and responding letters from CEQ and EPA are enclosed (Enclosures 1, 2, 3 and 4). The staff is working toward resolution of the remainder of the EPA comments within the next several months. The Commission was also informed that delays in the schedule would occur for publication of the final rule and the GEIS and that a final schedule would be provided following negotiations with CEQ and EPA. Finally, the Commission was informed that efforts to revise the regulatory guide and environmental standard review plan would be deferred until after expiration of the final date to challenge the final rule.

Discussion:

I. Agreement Reached with CEQ and EPA on Modifications to Certain Procedural Aspects of the Proposed Rule

CEQ and EPA agree that the proposed changes to the procedural elements of the rule, described below, should accommodate their concerns about limiting public comment and about the consideration of significant new information in individual license renewal environmental reviews. Both agencies reserve final judgement until their review of the final rule and final GEIS, to determine whether the NRC proposals have been satisfactorily implemented.

As a consequence of these agreements, the staff proposes to make the following changes to the proposed rule:

1. A supplemental site-specific environmental impact statement (EIS), rather than an environmental assessment, will be required in each license renewal proceeding. The EIS will be supplemental to the GEIS.
2. The final rule and GEIS will not include conditional cost-benefit conclusions. Conclusions on the overall cumulative impacts will be made in each site-specific supplemental EIS.

3. To accommodate EPA's concern that relevant information be easily available to the public, the supplemental EIS will summarize the discussion in the GEIS and reference the specific sections of the GEIS being relied upon.
4. The supplemental EIS will be published in draft form for public comment, consistent with 10 CFR § 51.73.
5. All comments will be reviewed by the staff regardless of whether the comment is directed to impacts in category 1, 2, or 3. The result of the staff review will be reported in the final supplemental EIS, in accordance with 10 CFR § 51.91(a)(1).
6. Comments on unbounded category 2 issues and category 3 issues and factual challenges as to whether a category 2 issue is bounded or unbounded for the particular site will be addressed in the final supplemental EIS.
7. Comments on category 1 issues and bounded category 2 issues, the assessments of which are codified in the rule, will be handled in the following manner:
 - a. The staff may determine that the information furnished is not new and significant and therefore the analysis codified in the rule stands. A commenter dissatisfied with such a response may file a petition for rulemaking under 10 CFR § 2.802 or seek a waiver under 10 CFR § 2.758 in order to pursue the matter in a hearing.
 - b. If the staff determines that the information furnished is new and significant, and

relevant both to the plant and to other plants, the staff will seek Commission approval to either suspend the application of the rule with respect to that analysis or to delay granting the renewal application (and possibly other renewal applications) until the rule can be amended.

- c. If the staff determines that the information furnished is new and significant, but relevant only to the specific plant, the staff will seek Commission approval to waive the appropriate section of the rule in that renewal proceeding.
- 8. Litigation of environmental issues in a hearing will be limited to unbounded category 2 and category 3 issues unless the rule is suspended or waived.
- 9. The GEIS and rule will be reviewed by the NRC on a schedule that allows revisions every 10 years, if necessary. The review will be accomplished in accordance with existing procedures for rulemakings and the specific procedures applicable for preparation of EIS's in 10 CFR Part 51.

Also as always allowed, a petition for rule making under the existing 10 CFR § 2.802 may be submitted by a member of the public at any time, requesting that the Commission modify the GEIS and 10 CFR Part 51 on the basis of significant new information.

II. Additional Policy Issues Arising from Public Comments on the Proposed Rule and Draft GEIS

Over one-hundred-and-twenty-five comment documents on the proposed rule have been received and reviewed. The two contractors supporting the GEIS have drafted responses to the purely technical comments. The staff is reviewing these draft responses. The staff is

developing proposed responses to comments that involve NRC policy and practice for environmental reviews. Ultimately Commission review and approval of these responses will be necessary. However, at the present time it is our desire to inform the Commission only of the comments involving policy issues. These are discussed below.

Public comments have raised significant issues of NRC policy and practice relative to the need for generating capacity, alternative energy sources, utility costs, and cost-benefit balancing. A number of states commented that the proposed rule and the draft GEIS would preempt or at least adversely affect state regulatory authority over the need for generating capacity, alternative energy sources, and utility costs. Some states and federal agencies and other commenters also expressed specific concerns with how these subjects and the cost-benefit balancing were analyzed in the GEIS. The staff is identifying options for addressing these concerns, and will report to the Commission when this effort is completed.

The staff intends to consult with EPA and CEQ in the process of developing the options. In addition, the staff is considering discussing the options with the states that expressed the concerns. Although these discussions are not required, they would provide greater assurance that the options presented to the Commission are based on a full understanding of state concerns. For example, it is clear from a legal standpoint that no NRC discussion in the GEIS of need for generating capacity or relative economics of license renewal could preempt any state decision on these issues, but further discussion with state officials could emphasize this point and avoid state perceptions to the contrary. Discussions would take place prior to reporting to the Commission and would add about 3 months to the schedule provided below. The staff desires Commission guidance on whether to hold discussions with the states at this time.

In the meantime the Commission should be aware of the potential that resolution of these comments could require a revision to the provisions of the existing 10 CFR Part 51 regarding the role of the need for generating

capacity, alternative sources of energy, utility costs, and cost-benefit balancing in NRC environmental reviews. A summary of the public comments concerned with NRC policy and practice in these areas follows:

1. Need for Generating Capacity

State commenters expressed concerns about the treatment of need for generating capacity in the proposed rule and the draft GEIS. These concerns include: 1) the states and not the NRC have the authority to determine whether there is a need for generating capacity, 2) the NRC forecasts of the need for generating capacity included in the GEIS and in 10 CFR Part 51 would preempt or interfere with a state's right and responsibility to determine need, 3) accurate forecasts can not be made so many years in advance, 4) to provide for meaningful state and public participation, need for generating capacity should be made a category 3 issue rather than category 1, and 5) if the NRC does address need for generating capacity it should defer to the states determination of need.

2. Alternative Energy Sources

Concerns were expressed by state and federal commenters about the treatment of alternative energy sources in the proposed rule and the draft GEIS. These concerns include: 1) the determination of energy mix is a state responsibility, 2) the comparison of alternatives should emphasize environmental consequences rather than economic costs, 3) an economic threshold test to trigger a further consideration of alternatives is inappropriate in a NEPA analysis, and 4) if a cost-benefit analysis is to be performed it is more appropriately used to compare and select among alternatives rather than just to demonstrate a favorable balance for license renewal.

3. Economic Costs

Concerns were expressed by state, federal, and utility commenters about the use of economic costs in the proposed rule and the draft GEIS. These concerns include: 1) the regulatory authority over utility economics which resides in the states, and to some extent in the Federal Energy Regulatory Commission, is preempted by NRC's heavy emphasis on economic analysis and use of economic decision criteria, and 2) for a NEPA review process, it appears that undue emphasis is given to economic costs.

4. Cost-Benefit Balancing

State, federal, and utility commenters expressed concerns with the use of cost-benefit balancing in the proposed rule and the draft GEIS. These concerns include: 1) the analysis is incomplete in its coverage of both environmental impacts and economic costs, 2) a cost-benefit analysis should be used to compare alternatives rather than just to demonstrate a favorable balance for license renewal, 3) there is double counting in the items included in direct costs and avoided costs, and 4) a cost-benefit balancing goes beyond the requirements of NEPA and of CEQ regulations, 40 CFR Part 1500. NEPA, as interpreted by CEQ regulations, requires only an assessment of the cumulative effects of a proposed federal action on the natural and man-made environment.

III. Status of Rulemaking and Schedule

Work on responding to comments on the proposed rule and accompanying documents is progressing on a broad front. However, the staff has given the highest priority to resolving those concerns that could affect the basic structure of the rule and that involve significant policy issues. With the discussions with CEQ and EPA and exchange of correspondence regarding the basic structure of the rule now completed, the staff is giving priority to completing responses to all EPA comments--technical as well as policy.

EPA has agreed to provide an assessment of the extent to which their comments are resolved within a month of receiving the proposed responses from NRC. The staff is working to complete these responses by early March 1993. Discussions with EPA and CEQ about the issues related to NRC policy and practice that are covered in Section II above will have the highest priority.

Because EPA and CEQ will take a final position on the extent to which their concerns have been addressed only after reviewing the final rule package, the staff intends to send them the draft final rule package to review prior to submittal to the Commission. This review adds 3 months to the schedule.

In SECY-92-198, the staff informed the Commission that any effort on revising the regulatory guide and the environmental standard review plan would be deferred until after publication of the final rule and GEIS and expiration of the date to challenge the rule. This is still the staff's intention.

The staff has developed the following schedule for the remainder of this rulemaking:

- o Brief Commission on status of rulemaking 02/19/93
- o Provide EPA with staff responses to its comments 03/05/93
- o Receive EPA assessment of satisfaction with responses 04/05/93
- o Commission paper on proposed resolution of policy concerns 05/14/93
- o Final rule package ready for Office review 09/24/93
- o Send final rule package to CRGR 11/10/93
- o Brief EDO 12/09/93
- o Send final rule package to EPA and CEQ for review 12/13/93

- o EPA and CEQ review letters received by 03/11/94
- o Submit final rule package to EDO 03/28/94
- o Submit final rule package to Commission 04/08/94
- o Final rule published by 06/10/94

Recommendation:

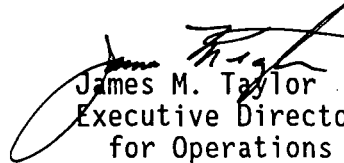
That the Commission:

- (1) Approve the modifications to the proposed rule negotiated with CEQ and EPA described in this paper and the enclosed letters.
- (2) Instruct the staff as to whether it should discuss the options for addressing concerns about preemption of state regulatory authority relative to need for generating capacity, alternative sources of energy, and utility costs with those states that expressed these concerns. This will add about 3 months to the schedule presented in this paper.
- (3) Note:
 - (a) Resolution of concerns raised in public comments about preemption of state regulatory authority could require a revision to the existing provisions of 10 CFR Part 51 regarding the role of the need for generating capacity, alternative sources of energy, utility costs, and cost-benefit analysis in NRC environmental reviews.
 - (b) The staff intends to consult with CEQ and EPA while developing the options to resolve the issues noted in (a).
 - (c) The staff will seek Commission approval on resolution of items of a policy nature.
 - (d) The schedule change will lead to publication of the final rule in June 1994.
 - (e) The staff intends to complete the revisions of the regulatory guide and the environmental standard review plan after

publication of the final rule and the
GEIS, and expiration of the date to
challenge the rule.

Coordination:

The office of the General Counsel has reviewed this
paper and has no legal objection.


James M. Taylor
Executive Director
for Operations

Enclosures:

1. Letter to Lucida Low Swartz dated November 3, 1992
from Martin G. Malsch.
2. Letter to Martin G. Malsch dated November 5, 1992
from Lucinda Low Swartz.
3. Letter to Anne Norton Miller dated December 30, 1992
from Martin G. Malsch.
4. Letter to Martin G. Malsch dated December 31, 1992
from Anne Norton Miller.

Commissioners' comments or consent should be provided directly
to the Office of the Secretary by COB Thursday, February 25, 1993.

Commission Staff Office comments, if any, should be submitted
to the Commissioners NLT Thursday, February 18, 1993, with an
information copy to the Office of the Secretary. If the paper
is of such a nature that it requires additional review and
comment, the Commissioners and the Secretariat should be apprised
of when comments may be expected.

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A. Sipton

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

NOV 03 1992

Lucinda Low Swartz
Deputy General Counsel
Executive Office of the President
Council on Environmental Quality
Washington, D.C. 20503

Dear Ms. Swartz:

Thank you for meeting with us on April 22, 1992 and again on July 1, 1992 to discuss the Council on Environmental Quality (CEQ) March 16, 1992 comments on the NRC's Draft Generic Environmental Impact Statement (GEIS) for License Renewal (NUREG-1437) and the proposed 10 CFR Part 51 environmental protection rulemaking for nuclear power plant license renewal (56 FR 47016, September 17, 1991). After consideration of CEQ's comments, the NRC proposes to accommodate these concerns in the final GEIS and Part 51 rule as follows:

1. The final rule and GEIS will not include any conditional cost-benefit conclusions. The final rule and GEIS retain the concept of Category 1 and Category 2 issues, by codifying the analyses of the impacts of each individual Category 1 and bounded Category 2 issue. Conclusions on the overall cumulative impacts for each license renewal application would be made in the site-specific supplemental EIS. The individual analyses of the impacts contained in the GEIS and which are codified in the rule for Category 1 and bounded Category 2 issues will be used in this cumulative impact assessment, along with the site-specific impacts for unbounded Category 2 and Category 3 issues.
2. The proposed rule's option of preparing an EA will not be adopted in the final Part 51 rule. Instead, the final rule will require the preparation of a supplemental site-specific EIS for each license renewal proceeding. The analyses and impacts for unbounded Category 2 and 3 issues will be discussed individually in the applicant's environmental report and the supplemental EIS. The analyses and impacts for Category 1 and bounded Category 2 issues will not be discussed individually in the applicant's environmental report or in the supplemental EIS, although the analyses and the impacts for each issue, as codified in the rule, would be referenced. The supplemental EIS would be a supplement to the GEIS, and would be published in draft form for public comment.

3. The final rule will be modified to make it clear that when a draft supplemental EIS is issued for a particular plant, the public may file comments on the supplemental EIS and on whether the analyses of impacts codified in the rule are applicable to the plant in question. Such comments will be considered by the NRC in the following manner:

- a. All comments submitted with respect to the applicability of the analyses of impacts codified in the rule and the analysis contained in the draft supplemental EIS will be addressed by NRC in the final supplemental EIS in accordance with 40 CFR 1503.4.

NRC's response to a comment regarding the applicability of the analysis of an impact codified in the rule to the plant in question may be a statement and explanation of its view that the analysis is adequate including, if applicable, consideration of the significance of the new information. A commentator dissatisfied with such a response may file a petition for rulemaking under 10 CFR 2.802 or waiver under 10 CFR 2.758, seeking to have the rule suspended, amended or waived based upon significant new information. If the commentator is successful in persuading the Commission that the new information does indicate that the analysis of an impact codified in the rule is incorrect in significant respects (either in general or with respect to the particular plant), then a rulemaking proceeding will be initiated or, in the case of waiver under Section 2.758, the merits of the new information will be considered in the renewal review and, if properly raised as an issue for adjudication, in any hearing held in accordance with 10 CFR Part 2, Subpart G.

- b. If the commentator provides new information which is relevant to the plant and is also relevant to other plants (*i.e.*, generic information) and that information demonstrates that the analysis of an impact codified in the final rule is incorrect, the NRC staff will seek Commission approval to either suspend the application of the rule on a generic basis with respect to that analysis or to delay granting the renewal application (and possibly

other renewal applications) until the rule can be amended.

- c. If a commentator provides new, site-specific information which demonstrates that the analysis of an impact codified in the rule is incorrect with respect to the particular plant, then the NRC staff will seek Commission approval to waive the application of the rule with respect to that analysis in that specific renewal proceeding.
 - d. The environmental issues to be litigated in any renewal hearing that is held will be limited to those addressed in the supplemental EIS (i.e., unbounded Category 2 and Category 3 impacts), absent a suspension of the rule or a ruling under Section 2.758 that the application of the rule should be waived or an exception be made for the particular proceeding.
4. The final rule will be modified to require the NRC to review the rule every 10 years and update it as necessary. The NRC would initially perform a review to determine what, if anything, in the rule requires updating. A scoping notice would be published in the Federal Register indicating the results of the NRC's review, and inviting public comments and proposals for other areas that should be updated. Established procedures for rulemaking would be utilized if the rule needs to be changed.

We believe that these proposals adequately address all of the substantive concerns raised by CEQ, while retaining much of regulatory and licensing efficiency benefits of the GEIS and 10 CFR Part 51 rulemaking which were envisioned by the NRC. We look forward to CEQ's response to our proposals.



Martin G. Malsch
Deputy General Counsel for
Licensing and Rulemaking,
Office of the General Counsel



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

November 5, 1992

Mr. Martin G. Malsch
Deputy General Counsel for
Licensing and Rulemaking
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Malsch:

Thank you for your letter dated November 3, 1992 in which you describe the efforts of the Nuclear Regulatory Commission (NRC) to address the concerns raised by the Council on Environmental Quality (CEQ) regarding NRC's Generic Environmental Impact Statement for License Renewal (GEIS). On behalf of CEQ, I sincerely appreciate the way in which the NRC staff has tried to understand and to accommodate our concerns.

As outlined in your letter, NRC is proposing to issue a final rule which codifies factual summaries of the analyses of environmental impacts presented in the GEIS. Further, NRC is now proposing to eliminate the conditional cost-benefit analysis, to require the preparation of a site-specific environmental impact statement (EIS) (supplementing the GEIS) for each license renewal proceeding, and to address all comments submitted with respect to the generic and site-specific analyses. In my view, the proposal as modified is in keeping with the goals and requirements of the National Environmental Policy Act (NEPA) and the CEQ regulations implementing the procedural provisions of that statute.

CEQ raised three issues in its March 16, 1992, comments on the GEIS. First, I questioned whether the purpose of the GEIS was to provide support for NRC's proposed rule on relicensing or to provide support for a future decision on a specific license renewal application. It is now clear that the analysis found in the GEIS, along with site-specific analysis to be contained in a supplemental EIS prepared for a particular license renewal application, will be considered by the Commission in its decision on whether to grant or deny that application. In this way, all the potential environmental impacts of a relicensing decision will be considered by the agency.

Second, I noted that the GEIS should not be used to reach "conclusions" regarding the acceptability of environmental impacts before a site-specific analysis was completed. As noted

Letter to Martin G. Malsch
November 5, 1992
Page Two

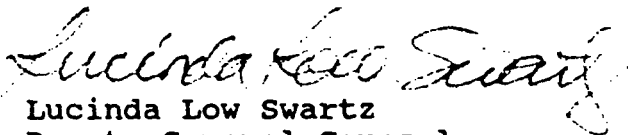
above, NRC has now decided to eliminate the conditional cost-benefit analysis and will consider the generic environmental impacts analyzed in the GEIS and the site-specific impacts analyzed in the site-specific supplemental EIS in its decisionmaking process.

Finally, I found fault with NRC's proposal to codify "conclusions" regarding the acceptability of many generic environmental impacts and to limit public comment on the applicability of the generic conclusions to a specific site. NRC is now proposing to codify a summary of the analyses contained in the GEIS on the Category 1 and bounded Category 2 environmental impacts, but will not be drawing conclusions as to the acceptability of those impacts until completion of the supplemental EIS. In addition, NRC will accept and address comments on the site-specific EIS, as well as on whether the analyses contained in the GEIS and codified in the final rule are applicable to the site at issue.

In sum, I believe that the procedural changes which NRC now proposes to adopt satisfy the concerns CEQ raised in its comments on the GEIS. This belief, however, is based upon the information you provided in your letter and I would reserve final judgment until a final GEIS and final rule are available for review.

Again, I thank you for your courtesy and cooperation.

Sincerely,


Lucinda Low Swartz
Deputy General Counsel



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

December 30, 1992

Ms. Anne Norton Miller, Director
Federal Agency Liaison Division
Office of Federal Activities
U.S. Environmental Protection Agency
401 M Street SW
Washington DC 20460

Dear Ms. Miller:

Thank you for meeting with us on December 3, 1992 to discuss the U.S. Environmental Protection Agency (EPA) March 16, 1992 comments on the NRC's Draft Generic Environmental Impact Statement (GEIS) for License Renewal (NUREG-1437) and the proposed 10 CFR Part 51 environmental protection rulemaking for nuclear power plant license renewal (56 FR 47016, September 17, 1991). The first two EPA concerns on public participation and future reviews (pp. 2-3 of March 16, 1992 EPA letter) appear to be coincident with the concerns of the Council on Environmental Quality (CEQ). The NRC has made an informal proposal to CEQ to address CEQ's concerns (Enclosure A), which CEQ has tentatively accepted (Enclosure B). The NRC believes that this proposal, as supplemented in response to specific EPA concerns raised at the December 3, 1992 meeting and in subsequent telephone conversations between EPA and NRC, responds to the first two EPA concerns on public participation and future review of the GEIS and Part 51 rulemaking¹. NRC's proposal consists of the following elements:

1. The final rule will require the preparation of a supplemental site-specific EIS for each license renewal proceeding; the option in the proposed rule of preparing an EA would not be adopted. The supplemental EIS would be a supplement to the GEIS, and would be published in draft form for public comment. Under existing requirements (10 CFR §§ 51.73, 51.92(d)(1)), a minimum of 45 days would be provided for public comment on the draft supplemental EIS².

¹The third concern, with respect to NRC utilization of local public notice procedures recommended by CEQ in 40 CFR 1506.6(b)(3), will be addressed separately by the Staff in its responses to EPA's technical comments on the GEIS.

²It is the NRC's intention that the notice of availability of the draft supplementary EIS which is published in the Federal Register will also refer to the public availability of the GEIS then in effect.

2. The final rule will be modified to make it clear that the public may file comments on the draft supplemental EIS regarding whether the GEIS' analyses of impacts which are codified in the rule are applicable to the plant in question, regardless of whether the comment is directed to impacts in Categories 1, 2 or 3.
3. All comments on the applicability of the analyses of impacts codified in the rule and the analysis contained in the draft supplemental EIS will be addressed by NRC in the final supplemental EIS in accordance with 40 CFR § 1503.4, regardless of whether the comment is directed to impacts in Categories 1, 2 or 3.

Such comments will be addressed by the NRC in the following manner:

- a. NRC's response to a comment regarding the applicability of the analysis of an impact codified in the rule to the plant in question may be a statement and explanation of its view that the analysis is adequate including, if applicable, consideration of the significance of the new information. A commentator dissatisfied with such a response may file a petition for rulemaking under 10 CFR § 2.802³. If the commentator is successful in persuading the Commission that the new information does indicate that the analysis of an impact codified in the rule is incorrect in significant respects (either in general or with respect to the particular plant), then a rulemaking proceeding will be initiated (as discussed below).
- b. If the commentator provides new information which is relevant to the plant and is also relevant to other plants (i.e., generic information) and that information demonstrates that the analysis of an impact codified in the final rule is incorrect, the NRC staff will seek Commission approval to either suspend the application of the rule on a generic basis with respect to that analysis or to delay granting the renewal application (and possibly other renewal applications) until the rule can be amended. The updated GEIS would reflect the corrected analysis and any additional consideration of alternatives as appropriate.

³The NRC's procedures in 10 CFR Part 2, Subpart H with respect to petitions for rulemaking will be set forth in an appendix to the GEIS.

- c. If a commentator provides new, site-specific information which demonstrates that the analysis of an impact codified in the rule is incorrect with respect to the particular plant, then the NRC staff will seek Commission approval to waive the application of the rule with respect to that analysis in that specific renewal proceeding. The supplemental EIS would reflect the corrected analysis and any additional consideration of alternatives as appropriate.
4. The analyses and impacts for unbounded Category 2 and 3 issues will be discussed in the supplemental EIS. Although the GEIS's analyses and impacts for Category 1 and bounded Category 2 issues will not be discussed in detail in the supplemental EIS, summaries of the GEIS's analyses and impacts together with cross-references to the specific sections of the GEIS will be provided in the supplemental EIS.
5. The final rule and GEIS will not include any conditional cost-benefit conclusions. Conclusions on the overall cumulative impacts for each license renewal application would be made in the site-specific supplemental EIS. The conclusions on overall cumulative impacts in the supplemental EIS would be based upon the GEIS's generic analyses for Category 1 and bounded Category 2 issues, as well as the site-specific analyses of unbounded Category 2 and Category 3 issues in the supplemental EIS⁴.
6. The final rule will be modified to require the NRC to review the rule and update it as necessary every 10 years (i.e., the review will be initiated in advance of the 10 year period, such that any final rule necessary to update

⁴NRC agrees that in assessing the significance of an impact, c.f. 40 CFR 1508.27(b)(7), the cumulative impact will be considered, as that term is defined in 40 CFR 1508.7, viz.:

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (emphasis added).

the GEIS will be effective 10 years from the last update)⁵. The NRC would initially perform a review to determine what, if anything, in the rule requires updating due to significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, consistent with 40 CFR 1502.9. A scoping notice would be published in the Federal Register indicating the results of the NRC's review, and inviting public comments and proposals for other areas that should be updated.

7. The statement of considerations (SOC) will make clear that a petition for rulemaking under 10 CFR 2.802 may be submitted by a member of the public at any time between the 10 year updates, if there is significant new generic or site-specific information suggesting that the analyses or conclusions in the GEIS and the Part 51 rule are substantially incorrect (i.e., more than de minimis errors).

We believe that these proposals adequately address EPA's concerns on public participation and future review of the analyses in the GEIS, while retaining much of regulatory and licensing efficiency benefits of the GEIS and 10 CFR Part 51 rulemaking which were envisioned by the NRC. We look forward to EPA's response to our proposals.



Martin G. Malsch
Deputy General Counsel for
Licensing and Rulemaking,
Office of the General Counsel

⁵The statement of considerations for the final Part 51 rule will provide the rationale for revising and updating the rule every 10 years.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 31 1992

OFFICE OF ENFORCEMENT

Mr. Martin G. Malsch
Deputy General Counsel for
Licensing and Rulemaking
Office of General Counsel
Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Malsch:

Thank you for your letter dated December 30, 1992, which provides a Nuclear Regulatory Commission (NRC) response to the Environmental Protection Agency's (EPA) initial concerns on public participation and future reviews contained in its comment letter dated March 16, 1992 (pp. 2-3) on the Draft Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants and proposed rulemaking.

The EPA commends the NRC on its development of additional public participation procedures which will allow the public to comment on both the generic and site specific concerns in future, tiered, National Environmental Policy Act (NEPA) documentation.

Your response letter focused on the first two items listed under our general comments, public participation and future reviews section (pp. 2-3), addressing NEPA tiering and the NRC petitioning process.

EPA recommended that subsequent NEPA documents be tiered to the GEIS and that the Category 1 and bounded Category 2 issues in the GEIS be summarized and incorporated by reference into the tiered, site-specific documents. Your letter indicates that you will incorporate these recommendations into the NEPA process for license renewal of nuclear plants. We endorse the NRC's decision to prepare supplemental, site-specific environmental impact statements (EISs) for all sites as the process will provide more public participation than typically occurs when environmental assessments are prepared.

We also recommended a public commenting period of 60 days because of the need for the public to reference the GEIS during site-specific NEPA reviews. In the paragraph one of your proposal, it provides for a minimum of 45 days for public comment on the draft EIS. EPA concurs with the 45 day period since the NRC will summarize and incorporate by reference the GEIS findings, and the 45 day period is in accordance with the Council on Environmental Quality's (CEQ's) regulations for implementing the procedural provisions of the NEPA (40 CFR Section 1506.10(c)). Your letter states that the NRC will refer to the public availability of the GEIS during the notice of availability for the supplemental, site-specific EISs. The NRC's commitment to making the GEIS readily available to the public is important because of the substantial and technical nature of the material that will be incorporated by reference in the supplemental EISs.

In our draft GEIS comments, we requested that the NRC describe the petitioning process that the public would use if individuals were to comment on a site-specific relicensing action and your letter reflects that the NRC's rulemaking petitioning process will be included in an appendix for public accessibility and reference. We understand that the public may comment on both the GEIS and site-specific issues during the NEPA review for the individual renewal applications and that the NRC will meet the response to comments requirements under 40 CFR Section 1503.4. As indicated in paragraphs 3.b. and 3.c. of your letter, this may include evaluating alternatives not previously considered and modifying the analysis, where the NRC agrees that it is appropriate (40 CFR Sections 1502.9 and 1503.4).

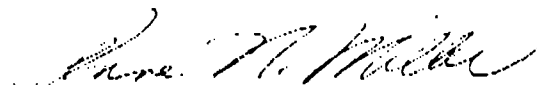
Paragraph 4 in your proposal indicates that the cumulative impact analysis will be consistent with 40 CFR 1508.7, to include the incremental impacts of relicensing when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions.

We support your decision to include in the statement of considerations accompanying the Part 51 rule the rationale for choosing to update the GEIS every 10 years instead of every five years, as recommended in the CEQ Forty Most Asked Questions Concerning CEQ's NEPA Regulations. Furthermore, we support your decision to acknowledge your responsibility to supplement the analysis in the GEIS, if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR Section 1502.9). We understand this includes Category 1 and 2 issues.

In conclusion, the additional procedures described in the NRC proposal further expand and define the NRC policy for public participation which EPA endorses. The NRC proposal addressed part of one section of the EPA general comments. We look forward

to the NRC response to the other general comments, the recommended issue category changes, and technical comments provided in our draft GEIS comment letter. We will reserve judgement on the GEIS and proposed rulemaking until we review the final documents. In the interim, we look forward to continuing our dialog and interactions with you on the GEIS revisions. If you have any questions on our comments, please contact me on (202) 260-5071 or have your staff contact Susan Offerdal on (202) 260-5059.

Sincerely,



Anne Norton Miller, Director
Federal Agency Liaison Division
Office of Federal Activities